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### ***THE STABLE KEEPERS ACT***

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# CHAPTER 1

## INTRODUCTION

### A. BACKGROUND AND SCOPE OF THE REPORT

It was recently suggested to the Commission that *The Stable Keepers Act* be reviewed in connection with the legal rights of farmers who pasture or custom feed cattle for another person. *The Stable Keepers Act* gives stable keepers the right to exercise a lien over animals and effects owned by another for the value of services provided in respect of the chattel.<sup>1</sup>

The law of commercial liens has received attention from both law reform agencies and legislatures throughout Canada.<sup>2</sup> Both the Alberta Law Reform Institute and the Uniform Law Conference of Canada have issued reports recommending extensive reform in this area of the law, including the enactment of comprehensive commercial liens legislation.<sup>3</sup> The Uniform Law Conference of Canada has also published a *Uniform Liens Act*.<sup>4</sup> The Commission is indebted to the work of these institutions and is mindful of the principles underlying their proposed reforms.

The scope of this report is more limited. The Commission's goal is to make recommendations for modernizing *The Stable Keepers Act* while enhancing its quality as a relatively user-friendly and flexible instrument, as befits a "business which may not at times accommodate rigid rules or fussy detail."<sup>5</sup> Accordingly, this report will not address many of the issues dealt with in the more expansive reports of the Alberta Law Reform Institute and the Uniform Law Conference and does not, except perhaps in one instance, recommend a radical departure from the current law.

In preparing this report, a Draft Report for Consultation was prepared and distributed to as many stable keepers and boarding kennel operators as the Commission could locate. In addition, the Draft Report was sent to rural GO Teams Branch offices of the Manitoba Agriculture, Food and Rural Initiatives Department, as well as the Keystone Agricultural Producers.

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<sup>1</sup> By common law, animals are classified as chattel.

<sup>2</sup> Recent legislative activity in the area of commercial liens includes the *Ontario Repair and Storage Liens Act*, R.S.O. 1990, c. R-25; the *Saskatchewan Commercial Liens Act*, S.S. 2001, c. C-15.1; the *Nova Scotia Liens Act*, S.N.S. 2001, c. 33 (not yet in force).

<sup>3</sup> Alberta Law Reform Institute, *Report on Liens* (Report for Discussion No. 13, 1992), online:

<<http://www.law.ualberta.ca/alri/>>; Uniform Law Conference of Canada, *Report on Commercial Liens* (1994), online: <<http://www.ulcc.ca/en/poam2/index.cfm?sec=1994&sub=1994ab>>.

<sup>4</sup> Uniform Law Conference of Canada, *Uniform Liens Act, 2000*, online: <<http://www.ulcc.ca/en/us/index.cfm?sec=1&sub=1u7>>. The Uniform Law Conference of Canada specifically excludes animal keepers' liens from the purview of its report and of the *Uniform Liens Act, 2000*. Its recommendations are therefore of more general than particular interest for the purpose of this report.

<sup>5</sup> *Twin Rivers Feed Lot (Trustee of) v. V&B Feeds Ltd.* (1996), 184 A.R. 301 at para.15 (C.A.)(QL).

**B. ACKNOWLEDGEMENTS**

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## CHAPTER 2

### OVERVIEW

#### A. LEGISLATIVE HISTORY

At common law, anyone who by labour, skill or materials adds value to the chattel of another, whether by express or implied agreement, has the right to retain possession of the chattel until their services are paid for. This is called a possessory lien because it implies the lien claimant having and retaining possession of the chattel.<sup>1</sup> There are two essentials for the common law possessory lien, namely possession of and adding value to the chattel. There is, perhaps surprisingly, considerable complexity and uncertainty in the common law respecting these requirements, including whether the lien is even available to those who are merely in lawful possession of another's chattel for a limited period of time. As well, there is the additional matter of whether an available possessory lien is particular or general.

The common law does not generally recognize a stable keeper's right to claim a lien over animals or gear in his or her care.<sup>2</sup> The principal reasons given for this are that stable keepers' services do not add to the value of the animals in their keeping, and that stable keepers typically do not have continuous possession of the animals. As a result, legislatures throughout the common law world have enacted statutes to give a right of possessory lien to stable keepers, and other tradespersons who are not able to claim a lien at common law, including warehousemen. Legislatures have also enacted legislation to declare, clarify, modify, and extend the common law in respect of those who do enjoy a right of possessory lien at common law, including innkeepers and repairers such as garage keepers. Most significantly, the commercial lien legislation enacted in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries gave lien claimants the right to sell the detained property in satisfaction of the debt. This right of sale is not available in the common law.

Manitoba enacted a statute granting stable keepers the right to claim a lien and to sell the detained property in 1884, *The Livery and Boarding Stable Keepers Act*.<sup>3</sup>

Although over the years a few amendments were enacted,<sup>4</sup> with a slightly shortened title, *The Stable Keepers Act*<sup>5</sup> is essentially the same as the 1884 Act. The current Act reads as follows:

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<sup>1</sup> R.A. Brown, *The Law of Personal Property*, 3<sup>rd</sup> edition by W.A. Rauschenbush (Chicago: Callaghan & Co., 1975) at 390-406, and E.L.G. Tayler & N.E. Palmer, eds. *Crossley Vaines' Personal Property*, 5<sup>th</sup> ed. (London: Butterworths, 1973) c. 7.

<sup>2</sup> See *Harding v. Johnston* (1909), 18 Man. R. 625 at 626 (C.A.).

<sup>3</sup> S. M. 1884, c. 15.

<sup>4</sup> See Appendix A.

<sup>5</sup> C.C.S.M. c. S200.

### **Definition of "stable keeper"**

1 In this Act, "stable keeper" means the keeper of a livery stable, or of a boarding or sale stable.

### **Keepers of stables may have liens on animals**

2 Every stable keeper has a lien on the animals and effects hereinafter mentioned for the value or price of any food, care, attendance, or accommodation, furnished for any animal; and in addition to all remedies provided by law has the same rights and privileges for exercising and enforcing the lien, in so far as they are applicable, as boarding house keepers and hotel keepers have or possess by virtue of *The Hotel Keepers Act*, so far as not inconsistent with, or provided for by, this Act.

### **Keepers of stables may detain animals**

3 Any stable keeper in the province may detain in his custody and possession, before it has been removed out of his custody and possession, but not afterwards, any animal, vehicle, harness, furnishings, or other gear appertaining thereto, or any personal effects, of any person who is indebted to him for stabling, boarding, or caring for, the animal; and the right of detention by any keeper of a livery stable of any animal has priority over, and is not subject to, any existing lien, security interest, as defined in *The Personal Property Security Act*, bill of sale, or other charge or encumbrance of whatever nature or kind, affecting the animal.

### **Animals, etc. detained may be sold after one month**

4 Every stable keeper is obliged to keep in his possession, and is responsible for, any animals and effects detained by him for the full period of the detention, unless they are sooner released; and if the owner does not reclaim and release the animals and effects so detained within one month from the commencement of the detention, the person detaining them may cause them to be sold by public auction; and, after paying himself and the costs of sale, he shall pay over to the owner of the animals and effects the balance, if any, of the price thereof.

### **Disposal of balance if not paid to owner**

5 Where the owner cannot be found, the balance shall be handed over to the Registrar of the Court of Queen's Bench, to be kept by him for the owner for one year; after which time, if the owner does not appear or claim the amount so kept, it shall be paid over to the Minister of Finance, and form part of the Consolidated Fund.

### Copy of Act to be posted

6 Every stable keeper shall have a copy of this Act conspicuously posted up in the office, and in at least two other conspicuous places in his stable.

In this report, a reference to *The Stable Keepers Act* is a reference to this Act.

## B. JUDICIAL PROCEEDINGS

There are very few reported cases respecting the Act between 1884 and 1996. Two early Manitoba cases considered whether a lien was available in respect of animals left with a stable keeper without the owner's consent. In both *Harding v. Johnston*<sup>6</sup> and *Yeo v. Farragher*,<sup>7</sup> the Manitoba Court of Appeal applied the common law rule that a lien cannot be acquired on the goods of another except by the latter's consent given expressly or impliedly or given by a person authorized to act on the owner's behalf.<sup>8</sup> Where animals were left with stable keepers without the owner's knowledge or consent, no lien was created.

*Stock v. Teske*<sup>9</sup> was decided in 1996, followed by *Ference v. Wohlers*<sup>10</sup> and *Orr v. Stefanson*.<sup>11</sup> *Stock* dealt with liens claimed by stable keeper Teske against a horse and pony, owned by the Stocks, for their care. The trial judge held that Teske had no right to a lien against the pony because she had agreed to its removal by the Stocks. The Court held that, while potentially Teske had a right to a lien against the horse for the value or price of its care, despite its clandestine removal by the Stocks, Teske lost that right when she "could not advise [the Stocks] ... of that value or price when she claimed her lien and for sometime thereafter."<sup>12</sup>

*Ference v. Wohlers* involved a bison herd owned by Ference which, due to a drought in Alberta, was transported to Manitoba and boarded at Wohlers's farm. The animals "were to be free ranging ... [and] not ... housed in any structure or confined to a feedlot."<sup>13</sup> The arrangement was made orally and not reduced to writing.

While at Wohlers's farm the herd grew by several calves. The plaintiff Ference sued for an order directing the return of the original herd and moved for a summary judgment. The defendant Wohlers counterclaimed, arguing that he had a lien against the original herd for his costs of feed and care. The parties were in dispute about the compensation terms of the boarding arrangement. The Master granted the requested summary judgment and sent Wohlers's

<sup>6</sup> *Supra* note 2.

<sup>7</sup> [1918] W.W.R. 624 (C.A.).

<sup>8</sup> Brown, *supra* note 1 at 407. This rule does not apply at common law to liens exercised by innkeepers and common carriers on the basis that these individuals have an obligation to serve the public generally; see Brown, *supra* note 1 at 394 and 407.

<sup>9</sup> (1996), 112 Man. R. (2d) 54 (Q.B.) (QL) [*Stock* Q.B.], rev'd in part, (1997), 123 Man. R. (2d) 173 (C.A.) (QL).

<sup>10</sup> 2006 MBQB 63, 147 A.C.W.S. (3d) 55 (Master), aff'd 2006 MBQB 156, 204 Man.R. (2d) 230 [*Ference* Q.B.], rev'd in part 2007 MBQA 68, 214 Man. R. (2d) 222 [*Ference* C.A.].

<sup>11</sup> 2010 MBQB 114, 252 Man. R. (2d) 296.

<sup>12</sup> *Stock* Q.B., *supra* note 9 at para. 51. The Court of Appeal did not disturb this component of the trial judge's decision.

<sup>13</sup> *Ference* Q.B., *supra* note 10 at para. 1.

counterclaim for boarding costs to trial. The defendant appealed from the Master's decision. In his reasons for judgment on the appeal Justice Scurfield wrote:

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[8] Even if there is a debt owing, the defendant would not ordinarily be entitled to unilaterally retain property of the plaintiff as security for the alleged debt. However, there are some notable statutory exceptions to this rule. In the proper circumstances, the Act functions as such an exception. That Act clearly conveys the right to the keeper of a boarding stable to retain possession of boarded animals until its account for food, care, attendance, or accommodation is satisfied.

[9] The pertinent sections of this short Act are sections 1, 2, 3 and 6:

...

[10] It has been agreed as between the parties that the defendant did not post a copy of the Act on his premises. *The Hotel Keepers Act*, ... does not supplement or alter the Act on the point at issue.

[11] Therefore, the question is, based on the Act: Is the defendant entitled to a lien as against the original bison herd that both parties agree are the property of the plaintiff?

[12] Some of the issues raised by this general question are easily resolved. The Act clearly extends to "any animal". There is no doubt that the defendant provided food, care and attendance to the plaintiff's animals.

[13] There is no need to prove a specific contract in order to invoke the lien right. Based on similar but not identical legislation, the Alberta Court of Appeal concluded in *Twin Rivers Feed Lot (Trustee of) v. V & B Feeds Ltd.* reflex, (1996), 40 Alta. L.R. (3d) 36 at para. 11, [1996] A.J. No. 565 (QL), that "... the *Livery Stable Keepers Act* does not speak of agreement or contract, and none is needed to create a lien." And further, at para. 16, the court concluded that "... the lien can extend to any animals of the same bailor or owner which the stable keeper now holds, and that the lien covers bills for feeding and caring for other animals of the same bailor or owner." This part of the Alberta legislation is similar to the Act.<sup>[14]</sup>

[14] Thus, even if the court were to find that the agreement between the parties was too uncertain to be enforced, the defendant could still have a lien based on a *quantum meruit* claim. Finally, this defendant has never given up possession of the animals so as to lose his right to a lien.

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<sup>14</sup> See also *Stock Q.B.*, *supra* note 9 at para. 51.



[15] There are really two remaining issues:

1. Does the defendant's operation engage the Act?
2. Does the failure to post a copy of the Act result in a loss of any lien right?

### ISSUES

#### **1. Does the defendant's operation engage the Act?**

[16] Although the legislated definition of "stable keeper" in section 1 is not precise, it clearly includes operations described as boarding stables. What is a boarding stable? That term is not directly defined by the legislation. Language should normally be given its ordinary meaning. Dictionary definitions can be of some assistance. But, the court must pay particular attention to the context in which the words are used in the legislation and the purpose of the legislation. It is the duty of the court to review the language of the legislation as a whole and interpret it in both a contextual and purposive manner.

[17] The Act appears to have its origin in the 19<sup>th</sup> century. Horses were then the most common form of assisted transportation. Domestic animals such as cattle were raised in smaller numbers and housed in barns. Consequently, the passage of time has raised new problems of interpretation and application.

[18] The Act was last amended in 1993. The Legislature must have intended that it have continuing relevance. How does the Legislature intend this legislation to apply, if at all, to modern farms or feedlot operations?

[19] The dictionary definitions of "stable" are of little assistance. Some dictionaries define "stable" narrowly; others use it as a virtual synonym for any form of accommodation. No doubt the term "stable" conjures up images of horses. Yet, the Act applies to any domesticated animal. Some such animals are not normally housed in stables. The requirement that the Act be posted in an office and a stable generates a similar inference. No doubt a person who boards animals will frequently make use of a structure, but is it necessary to house the animals in a structure in order to generate a lien right?

[20] The disjunctive creation of lien rights clearly favours a broader application of the Act. A lien can be generated without providing any accommodation. Sections 2 and 3 make it clear that a lien is generated whenever "food, care, attendance, or accommodation" is provided "for any animal" [my emphasis]. If the Legislature had intended to tie the generation of a lien to the existence of a stable-like structure, then it seems logical that it would have required evidence of accommodation in that structure in order to qualify for a lien.

[21] Contextually, the use of disjunctive language, the addition of the term "boarding", and the inclusion of "any animal" support an interpretation of the



Act that is broader than that urged by the plaintiff. Read as a whole, the language indicates an intention to generate a lien even where the animals are not housed in a stable-like structure. Clearly, some animals such as bison and sheep may, by nature, be free ranging. Nevertheless, in a real way, by keeping the herd enclosed in his pastures, the defendant is also providing a form of accommodation.

[22] Admittedly, section 6 contemplates posting the Act in an office and elsewhere in a stable. However, the absence of a consequence for failure to post makes the language more permissive than mandatory.

[23] Purposively, I am satisfied that the Legislature intended the legislation to provide security for both traditional stable keepers and modern farmers. Thus, in the present fact situation, the evidence satisfies me that the defendant provided food, care and attendance to the plaintiff's animals. He also provided a form of accommodation. That finding engages the lien protection provided by the Act.<sup>15</sup>

Concerning the second issue, Justice Scurfield found that the word "shall" in section 6 should be read as permissive, and thus Wohlers's failure to post did not result in the loss to him of the right to claim the lien. Ference's motion for summary judgment for an order returning the original herd was denied on the basis that Wohlers had a valid possessory lien under *The Stable Keeper's Act*.

Ference successfully appealed the denial of his motion for summary judgment. The Court of Appeal, without deciding whether Wohlers was a stable keeper under the Act, construed the language of section 6 to be mandatory and found that Wohlers had no right to the lien he claimed.<sup>16</sup> In his analysis of section 6, Joyal J. A. wrote:

35 Agreeing with the motions judge, Wohlers argues that the absence in s. 6 of a specifically described or included consequence for non-compliance is suggestive of a procedural directive rather than a substantive requirement. Accordingly, he submits that s. 6 is directory and not mandatory.

36 In my view, the absence of a stated consequence for non-compliance should not be determinative as to whether s. 6 is mandatory or directory. More important is the consideration of the *Act* and the provision. Read in the context of the *Act*, the purpose of which is to provide stable keepers the obvious protection and security associated with a lien, the notice in s. 6 represents an express requirement imposed upon the stable keeper. The warning to a potential client that comes with such notice is the reasonable pre-condition for what Ference correctly characterizes as an exceptional statutory right, unavailable at common law.

37 To suggest that the absence of a specifically expressed or stated consequence renders the s. 6 requirement a mere procedural directive is to ignore the purpose of the *Act* and the provision itself. Reading s. 6 as a procedural

<sup>15</sup> Ference Q.B., *supra* note 10 at paras. 8-23.

<sup>16</sup> Ference C.A., *supra* note 10 at paras. 8, 40.

directive would deprive the provision of meaning and render it mere surplusage to the *Act*. It would also defeat the provision's purpose, a purpose which Wohlers readily concedes – to provide notice.

38 Counsel for Wohlers insists that s. 6 can be read as a procedural directive and still retain its meaning and purpose. Somewhat vaguely, she submits that non-compliance with the notice under s. 6 should be construed as something which can be “fixed.” She suggests that if s. 6 is read as a procedural directive, it can be seen as providing the basis (in cases of non-compliance) for the “making of a complaint.” That interpretation of s. 6 however raises obvious questions – a complaint to whom, and how?

39 I do acknowledge that there exists in analogous provisions in some provincial legislation (where there is a right to lien) a specifically stated consequence for cases of non-compliance with a similar notice requirement to that in s. 6. See, for example, *The Threshers' Liens Act*, R.S.M. 1987, c. T60, s. 17(2). It is notable that *The Hotel Keepers Act*, R.S.M. 1913, c. 88, previously contained such notice requirements (s. 12). However, they were removed by legislative amendment (*An Act to amend "The Hotel Keepers Act,"* S.M. 1931, c. 24, s. 7). See also, the *Innkeepers Act* in the Provinces of Ontario (R.S.O. 1990, c. I.7), Alberta (R.S.A. 2000, c. I.2), New Brunswick (R.S.N.B. 1973, c. I-10) and Newfoundland and Labrador (R.S.N.L. 1990, c. I-7). I also acknowledge that such an identified consequence in those provisions provides even greater clarity as to the mandatory nature of the provision. It does not follow however that the absence of such a specifically stated consequence is a basis for concluding that the word “shall” should be interpreted as directory rather than mandatory. Although the comparative examination of analogous provisions in somewhat similar legislation might in some cases provide guidance, such an examination does not displace the need to ensure that a provision like s. 6 is interpreted with a view to the purpose and coherence of its own *Act*.<sup>17</sup>

In addition to *The Hotel Keepers Act*,<sup>18</sup> Justice Joyal could have mentioned that neither *The Garage Keepers Act*<sup>19</sup> nor *The Warehousemen's Liens Act*<sup>20</sup> requires posting.

The third case, *Orr v. Stefanson*, concerned elk owned by the plaintiffs which were added to the defendants' elk herd at the defendants' ranch. During the course of a dispute between the parties, Stefanson wrote to the plaintiffs stating that they could not pick up their animals unless his accounts were paid in full, thus exercising some kind of lien upon the animals of the plaintiffs in order to collect his accounts, and that he would charge the plaintiffs \$1.50 per animal per day to maintain them.<sup>21</sup> Justice Dewar wrote about this aspect of the case:

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<sup>17</sup> *Ibid.* at paras. 35-39.

<sup>18</sup> C.C.S.M. c. H150.

<sup>19</sup> C.C.S.M. c. G10.

<sup>20</sup> C.C.S.M. c.W20.

<sup>21</sup> *Supra* note 11 at para. 86.

[88] Unfortunately, the parties did not address at trial the kind of lien which the defendants purported to exercise by withholding possession of the animals from the plaintiffs until his outstanding accounts were paid.

[89] There is no doubt that the defendants provided some care and maintenance to the plaintiffs' property and they may have been entitled to advance a common law possessory lien upon the animals.

[90] There is also currently an open question as to whether fencing animals in a pasture or fenced area such as existed here would make the defendants eligible to claim a stable keeper's lien pursuant to *The Stable Keepers Act*, .... Although Scurfield J. in the case of *Ference v. Wohlers*, ..., held that a farmer who allowed another's buffalo herd to be pastured on his farm was eligible to claim a stable keeper's lien, the Manitoba Court of Appeal ..., specifically left that question undecided until another day, preferring instead to dismiss the farmer's claim because he had not complied with the notice provisions of *The Stable Keepers Act*.

[91] I too need not decide the question as to what kind of lien was being advanced. Whether it was a *Stable Keepers Act* lien, or whether it was a possessory lien, I am not prepared to allow the corporate defendant any monies for any care given to the animals of the plaintiffs after September 15, 2007. Absent clear statutory authority, a person claiming a lien is not entitled to charge the owner for maintaining the animals while he prevents their release. A similar sentiment was expressed in the case of *Pease v. Johnston*, 1905 Carswell NWT 27, (1905), 1 W.L.R. 208, where a party claiming a lien on two horses was not entitled to charge for caring for the horses during the time he was exercising his lien. In coming to its decision, the court made the following comments, at para. 8:

... In the first place, no case was cited to me nor can I find any in which it was held that a person holding a lien upon personal property has the right to make such charges against the property; in fact, the decisions are quite the other way, and it is only necessary to refer to the case cited by Winters's advocate at the trial - *Somes v. British Empire Shipping Co.*, 8 H.L.C. 338, 11 Eng. Rep. 459. I refer to the judgment of Lord Wensleydale, at p. 345 of 8 H.L.C. He is reported as follows: "Two principal points have been raised in this case. The first is whether if a person who has a lien upon any chattel chooses to keep it for the purpose of enforcing his lien, he can make any claim against the proprietor of that chattel for so keeping it. No authority can be found affirming such a proposition, and I am clearly of opinion that no person has by law a right to add to his lien upon a chattel a charge for keeping it until the debt is paid. That is in truth a charge for keeping it for his own benefit, not for the benefit of the person whose chattel is in his possession." This view was practically concurred in by all the members of the Court. As I understand it, what is intended by

the party keeping the property for his own benefit is that he is keeping it for the purpose of enforcing his claim, and that he will not be allowed therefore to make such charge. ...

[92] I am of the view that the corporate defendant is not entitled to any maintenance charges after September 15, 2007. Essentially, the defendants are trying to have their cake and eat it too. They did not allow the plaintiffs to have access to their herds, yet still insist on claiming a maintenance fee for the animals during the period that they would not let the plaintiffs remove the animals.

[93] It seems to me that where a party has a wasting asset over which it claims a lien, it should act quickly in enforcing its lien, including the right of sale associated with that lien, if any. However, it cannot sit, and make money from the animals when there is no concurrence on the part of the owners to pay any ongoing maintenance fees. I do not accept that the corporate defendant is entitled to sit and continue to feed and house the animals for two and one-half years after asserting its lien of whatever description, and expect the plaintiffs to pay for the costs of its delay, especially where the maintenance fees charged exceed the value of the animals which were retained.

[94] Therefore, I do not allow the corporate defendant any monies claimed for services after September 15, 2007.<sup>22</sup>

### C. COMPARABLE LEGISLATION

Ontario, Saskatchewan, Alberta, and British Columbia also have legislation granting stable keepers or animal keepers the right to a possessory lien over animals in their care.<sup>23</sup> Saskatchewan and Alberta modernized their Acts relatively recently.

It is useful to consider these statutes with particular reference to the provisions setting out definitions, the articulation of the lien, the continuing care obligation of a lien claimant, the obligation, if any, to post notice of the legislation, and the remedies of a lien claimant. In this report, these Acts are referred to collectively as the other Canadian Acts.

### D. COMPARABLE MANITOBA LEGISLATION

There are four other Acts comprising the cluster of statutes enacted in regard to commercial liens in Manitoba. It is useful to compare the provisions, if any, respecting notice

<sup>22</sup> *Supra* note 11 at paras. 88-94.

<sup>23</sup> *Innkeepers Act*, R.S.O. 1990, c. I-7, s. 3 [in Ontario, the *Innkeepers Act* provides for a stable keeper's lien]; *Animal Products Act*, R.S.S. 1978 (Supplement), c. A-20.2 [this Act repealed and replaced the *Stable Keepers' Lien Act*, R.S.S. 1978, c. S-57 which was similar to Manitoba's Act]; *Animal Custom Care Regulations*, 2006, R.R.S., c. A-20.2, Reg. 11; *Animal Keepers Act*, S.A. 2005, c. A-40.5 [this Act repealed and replaced the *Livery Stable Keepers Act*, R.S.A. 2000, c. L-14 which was similar to Manitoba's Act]; *Livestock Lien Act*, R.S.B.C. 1996, c. 272. See Appendix B.

and sale contained in *The Threshers' Liens Act*,<sup>24</sup> *The Garage Keepers Act*,<sup>25</sup> *The Warehousemen's Liens Act*,<sup>26</sup> and *The Hotel Keepers Act*.<sup>27</sup> In this report, these Acts are referred to collectively as the comparable Manitoba Acts.

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<sup>24</sup> C.C.S.M. c. T60. See Appendix C.

<sup>25</sup> *Supra* note 19. See Appendix C.

<sup>26</sup> *Supra* note 20. See Appendix C.

<sup>27</sup> *Supra* note 18. See Appendix C.

## CHAPTER 3

### RECOMMENDATIONS FOR REFORM

#### A. IS THE STABLE KEEPERS ACT OBSOLETE?

The statutes to which reference is made in Chapter 2C indicate that the legislatures of Ontario, Saskatchewan, Alberta, and British Columbia believe there is a need for such legislation.<sup>1</sup> As the common law generally does not recognize a stable keeper's right to a lien over animals in his or her care, this legislation is critical to the enforcement of a stable keeper's right to be paid for services provided.

Both the Alberta Law Reform Institute and the Uniform Law Conference of Canada considered, and rejected, the idea that commercial liens no longer serve a distinct legal or economic purpose and could, where appropriate, simply be folded into the provincial personal property security regime as a deemed security interest.<sup>2</sup> Like them, the Commission recognizes the unique characteristics of the common law and statutory possessory liens and supports the need for stand-alone legislation granting those who add to or maintain the value of chattel a right to claim a lien over it for the cost of their services.

The Commission easily concludes that the continuation of a refurbished *Stable Keepers Act* is in order.

#### RECOMMENDATION 1

***The Stable Keepers Act should be repealed and replaced by an Act similar to that contained in Appendix D, embracing the following Recommendations.***

Incidentally, *The Animal Care Act* was enacted in 1996.<sup>3</sup> It relates to animal care and the protection of animals from abuse. It might be asked whether *The Stable Keepers Act* should be continued as a discrete Act or folded into *The Animal Care Act*. In addition to the statutes which provide for an animal keeper's possessory lien, referred to in Chapter 2C, Ontario, Saskatchewan, Alberta, and British Columbia have separate statutes dealing with animal care and

<sup>1</sup> It is also relevant that Manitoba had the opportunity to repeal the Act at the time of its most recent amendment in 1993, but did not do so. See also *Ference v. Wohlers*, 2006 MBQB 63, 147 A.C.W.S. (3d) 55 (Master), aff'd 2006 MBQB 156, 204 Man.R. (2d) 230 [*Ference Q.B.*] at para. 18, rev'd in part 2007 MBQB 68, 214 Man. R. (2d) 222 [*Ference C.A.*].

<sup>2</sup> Alberta Law Reform Institute, *Report on Liens* (Report for Discussion No. 13, 1992), online: <<http://www.law.ualberta.ca/alri/>>; at 63[ALRI Report]; Uniform Law Conference of Canada, *Report on Commercial Liens* (1994), online: <<http://www.ulcc.ca/en/poam2/index.cfm?sec=1994&sub=1994ab>> at 2 [ULCC Report]. Despite supporting the idea of a distinct statute, both institutions recommend importing many significant concepts from the personal property security regime into commercial liens legislation.

<sup>3</sup> C.C.S.M. c. A84.



protection of animals from abuse.<sup>4</sup> Consolidating *The Stable Keepers Act* and *The Animal Care Act* would provide "a one-stop shop". On the other hand, animal care and protection from abuse is quite distinct from provision of a possessory lien for animal keepers. The Commission endorses the separate statutes model of Ontario, Saskatchewan, Alberta, and British Columbia.

## B. TITLE OF THE ACT

Justice Scurfield concluded in *Ference v. Wohlers* that the reach of the Act should not be confined to animals housed in a stable.<sup>5</sup> While a consultation of the Manitoba Telephone System Yellow Pages for Winnipeg and Manitoba reveals that there are many stables operating, "stable keeper" no longer appears to be an apt term for a more inclusive statute. The Commission prefers the term "animal keeper" used in the *Animal Products Act*<sup>6</sup> of Saskatchewan and the *Animal Keepers Act*<sup>7</sup> of Alberta.

In addition, because the principal purpose of *The Stable Keepers Act* is to provide stable keepers with the right to claim a possessory lien, the Commission believes the title of the Act should contain the word lien, as does *The Threshers' Liens Act*,<sup>8</sup> *The Warehousemen's Liens Act*,<sup>9</sup> and the *Livestock Lien Act*<sup>10</sup> of British Columbia. Furthermore, *The Stable Keepers Act* does not relate to regulating the care of animals; this is treated in *The Animal Care Act*.<sup>11</sup> Including the word lien in the title of the Act will make the title more instructive.

## RECOMMENDATION 2

*The new Act should be titled The Animal Keepers' Lien Act.*

## C. DEFINITIONS

### Definition of "Animal"

*The Stable Keepers Act* of Manitoba uses the words "animal" and "animals" without defining them. Presumably, they include "companion animals" in respect of which care is provided by kennel operators, who are required to be licensed pursuant to *The Animal Care Act*. The *Animal Custom Care Regulations* of Saskatchewan and the *Animal Keepers Act* of Alberta define the term "animal", and the *Livestock Lien Act* of British Columbia defines the term

<sup>4</sup> *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O-36; *Animal Protection Act*, 1999, S.S. 1999, c. A-21.1; *Animal Protection Act*, R.S.A. 2000, c. A-41; *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372.

<sup>5</sup> *Ference Q.B.*, *supra* note 1 at para. 23. The Court of Appeal found it unnecessary to rule on this question.

<sup>6</sup> *Animal Products Act*, R.S.S. 1978 (Supplement), c. A-20.2, s. 15.1(1). See Appendix B.

<sup>7</sup> *Animal Keepers Act*, S.A. 2005, c. A-40.5, s. 1(b). See Appendix B.

<sup>8</sup> C.C.S.M. c. T60.

<sup>9</sup> C.C.S.M. c. W20.

<sup>10</sup> *Livestock Lien Act*, R.S.B.C. 1996, c. 272.

<sup>11</sup> *Supra* note 3.

"cattle", by listing specific animals or species of animals.<sup>12</sup> These definitions do not include fish, fowl or insects, such as bees, or reptiles. The *Animal Care Act* of Manitoba defines "animal" as "a non-human living being with a developed nervous system".<sup>13</sup> The Commission has already referred to Justice Scurfield's broadening the reach of the Act and indicated its preference for a more inclusive, indeed all inclusive, statute. In light of these considerations, the Commission proposes the following definition of the term animal: "a non-human living sentient being".

### Definition of "Animal Keeper"

Currently *The Stable Keepers Act* of Manitoba defines only stable keeper, a term which goes by the board by virtue of Recommendation 2. The *Innkeepers Act* of Ontario defines only "inn" and "innkeeper".<sup>14</sup> While it uses the words "keeper of a livery stable or a boarding stable",<sup>15</sup> it does not define them. The *Animal Products Act* of Saskatchewan defines "animal keeper", as "a person who for money or its equivalent stables, feeds, boards or cares for animals".<sup>16</sup> In section 15.1(2), in the articulation of the lien, the words "for feeding, grazing, sheltering, housing, confining, boarding, training, exercising, treating, or caring" are used.<sup>17</sup> The definition of "animal keeper" in *The Animal Keepers Act* of Alberta is the same as the Saskatchewan definition with the additional words "... animal that is owned by another person".<sup>18</sup>

There are various purposes for which animal keepers keep animals, including boarding, training, grooming, feeding, pasturing, selling, fostering, treating, and rescuing. The Commission believes that, rather than listing in an extensive definition several of the many purposes for which animal keepers may keep animals, the definition of "animal keeper" should be simply "animal keeper means a person, who for money or its equivalent, keeps for any purpose an animal owned by another person".

### Definition of "Gear"

Section 3 of *The Stable Keepers Act* of Manitoba provides for a lien respecting "any animal, vehicle, harness, furnishings, or other gear appertaining thereto", and in section 4 the word "effects" is used. The *Livestock Lien Act* of British Columbia is similar.<sup>19</sup> The *Innkeepers Act* of Ontario includes in the lien only a "carriage".<sup>20</sup> The Saskatchewan legislation does not include gear. The *Alberta Animal Keepers Act* includes gear and defines it.<sup>21</sup> The Commission agrees that, like the *Animal Keepers Act* of Alberta, the new Act should use and define the term

<sup>12</sup> *Animal Custom Care Regulations*, 2006, R.R.S., c. A-20.2, Reg.11, s. 2(2); *supra* note 7, s. 1(a); *supra* note 10, s. 1.

<sup>13</sup> *Supra* note 3, s. 1(1).

<sup>14</sup> *Innkeepers Act*, R.S.O. 1990, c. I-7, s. 1 [in Ontario, the *Innkeepers Act* provides for a stable keeper's lien].

<sup>15</sup> *Ibid.*, s. 3.

<sup>16</sup> *Supra* note 6, s. 15.1(1).

<sup>17</sup> *Ibid.*, s. 15.1(2).

<sup>18</sup> *Supra* note 7, s. 1(b).

<sup>19</sup> *Supra* note 10, ss. 2-3.

<sup>20</sup> *Supra* note 14, s. 3(2).

<sup>21</sup> *Supra* note 7, s. 1(d).



gear as follows "gear means chattel and includes any vehicle, tack, furnishings, or container, left with and in the possession of an animal keeper relating to an animal over which a lien is claimed".

### RECOMMENDATION 3

*The new Act should include the following definitions*

- "animal" means a non-human living sentient being;
- "animal keeper" means a person who for money or its equivalent keeps for any purpose an animal owned by another person;
- "gear" means chattel and includes any vehicle, tack, furnishings, or container, left with and in the possession of an animal keeper relating to an animal over which a lien is claimed.

#### D. THE LIEN

*The Stable Keepers Act provides:*

##### **Keepers of stables may have liens on animals**

2 Every stable keeper has a lien on the animals and effects hereinafter mentioned [in section 3 effects are specified as "vehicle, harness, furnishings, or other gear appertaining" to any animal] for the value or price of any food, care, attendance, or accommodation, furnished for any animal; and in addition to all remedies provided by law has the same rights and privileges for exercising and enforcing the lien, in so far as they are applicable, as boarding house keepers and hotel keepers have or possess by virtue of *The Hotel Keepers Act*, so far as not inconsistent with, or provided for by, this Act.

##### **Keepers of stables may detain animals**

3 Any stable keeper in the province may detain in his custody and possession, before it has been removed out of his custody and possession, but not afterwards, any animal, vehicle, harness, furnishings, or other gear appertaining thereto, or any personal effects, of any person who is indebted to him for stabling, boarding, or caring for, the animal; and the right of detention by any keeper of a livery stable of any animal has priority over, and is not subject to, any existing lien, security interest, as defined in *The Personal Property Security Act*, bill of sale, or other charge or encumbrance of whatever nature or kind, affecting the animal.

Most of the other Canadian Acts contain similar sections. There are five points to be addressed.

First, there has been some uncertainty in the case-law about when a statutory animal keeper's lien is created.<sup>22</sup> At common law, a lien typically does not arise until the lien claimant has completed the work or services in respect of the chattel.<sup>23</sup> In some cases, this rule could result in harsh consequences for the animal keeper, and the Commission agrees with the Alberta Law Reform Institute that there may be circumstances when it is unreasonable to require that a claimant complete the work before being able to enforce a lien.<sup>24</sup>

Both the Alberta Law Reform Institute and the Uniform Law Conference of Canada propose that the common law be modified to provide for a lien to come into effect at the commencement of the services giving rise to the lien.<sup>25</sup> As a safeguard, the *Uniform Liens Act* also provides that, if services are not completed, the lien secures only the fair market value of the services provided.

The Commission agrees that the lien should come into effect on commencement of the services which give rise to the lien. The Commission also shares the view that, if the services are not completed, it is reasonable that the fair value of the services provided be secured by the lien.

Second, a possessory lien can be either specific (particular) or general. A specific possessory lien is a right to retain a specific chattel until all charges incurred for services performed upon or in relation to it have been paid; it is a creature of common law. A general possessory lien includes not only charges for services provided to a specific chattel, but all outstanding charges or debts owed by the owner of the specific chattel to the lien claimant. A general possessory lien exists only by custom, agreement, or statute.<sup>26</sup> Sections 2 and 3 of the current Act have been interpreted as providing both a specific and, to some extent, a general possessory lien.<sup>27</sup>

The Commission can see no reason for the statute to provide for the extraordinary general possessory lien except in the limited circumstances described in Section F of this report, below. The wording of the new Act should indicate expressly that what is provided is a specific possessory lien against a specific animal or animals or gear for charges respecting services rendered to the specific animal(s), subject to the particular circumstances described in Section F below.

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<sup>22</sup> See for example, *Toronto Dominion Bank v. Dunn-Rite Cattle Corp.*, 2005 ABQB 391, [2006] 8 W.W.R. 175, rev'd 2006 ABCA 353, [2007] 1 W.W.R. 599.

<sup>23</sup> See R. R. Cuming, "The Spreading Influences of PPSA Concepts: The Uniform Liens Act" (1999) 15 Banking and Finance Law Review 1 at 13.

<sup>24</sup> ALRI Report, *supra* note 2 at 80.

<sup>25</sup> ALRI Report, *supra* note 2 at 80; Uniform Law Conference of Canada, *Uniform Liens Act*, 2000, online: <<http://www.ulcc.ca/en/us/index.cfm?sec=1&sub=1u7>>, s. 4.

<sup>26</sup> R.A. Brown, *The Law of Personal Property*, 3rd edition by W.A. Raushenbush (Chicago: Callaghan & Co., 1975) at 405, and E.L.G. Tyler & N.E. Palmer, eds. *Crossley Vaines' Personal Property*, 5<sup>th</sup> ed. (London: Butterworths, 1973) at 138-139.

<sup>27</sup> See *Ference Q.B.*, *supra* note 1 at para. 13.

Third, section 2 of the current Act contains two components: the provision of the lien and a statement respecting the remedies for enforcing the lien. Section 3 also contains two components: a reiteration of the lien and a statement respecting the priority of the lien. Some amalgamation and separation would be helpful. The first parts of each section can be amalgamated and the second parts of each section removed to comprise discrete sections as set out in the draft legislation at Appendix D of this report.

With regard to priority, the Commission does not recommend any change to the current provision which gives priority to the stable keeper's lien over all other property interests affecting the animal and gear, including those of secured creditors. The priority of the statutory lien over other property interests reflects the idea that commercial lien claimants have added to or maintained the value of the chattel and that all others with an interest in the chattel therefore benefit from the lien claimant's services. The Commission agrees with this premise in respect of animal keepers' services and sees no reason to depart from the existing priority rule.

Fourth, can an animal keeper include in the lien claim charges for the cost of food, care, and accommodation incurred after the owner has been notified of the lien claim? *The Stable Keepers Act* and other Canadian Acts are silent on this question. This was an issue in *Orr v. Stefanson*.<sup>28</sup> With reference to apparently the only two cases cited to it, the court held that such charges cannot be included.<sup>29</sup> However, there are other cases which have held for the lienor.<sup>30</sup>

One respondent to the Commission's Draft Report for Consultation wrote:

"Of course the provision for the lien should cover these costs. Animal care is not cheap! Using a horse as an example: a horse's food costs 60 dollars a month, as well there are the potential costs associated with bedding the animal, the cost of hired labor or the animal keeper's time, medication, water, grain, etc. On top of these costs is the revenue lost by not having that horse's 'space' occupied by a paying client. A 'stable keeper' could potentially lose \$500 in one month on one horse! These costs of course only multiply as the number of animals claimed in lien increases.

Why should the stable keeper be responsible for the costs of someone else's animal at any time? It is frankly ridiculous that because someone else is defaulting on their payment the animal keeper must pay for their animals without compensation. It is an abuse of the stable keeper's ethics to not let the animal suffer neglect at their hands that they be responsible for the costs of its care during detention. Clearly the stable keeper should be entitled to the ability to recoup their costs.

In addition, the stable keeper already has the time-consuming hassle of putting the animal in a public auction. The act as it stands (or is

<sup>28</sup> 2010 MBQB 114, 252 Man. R. (2d) 296.

<sup>29</sup> *Ibid.* at paras. 91-92.

<sup>30</sup> *Black v. Brennan*, 35 Ky (5 Dana) 310 (1837); *Malcolm v. Simpson-Thompson Motor Car Co.* (Tex. Civ.App), 164 SW 924 (1914).

interpreted) thoroughly penalizes the animal keeper for the animal owner's misdoings. If I were an animal keeper I would thoroughly dread the day when payment did not appear for an animal owned by someone else that was in my care."<sup>31</sup>

Another respondent wrote:

"In one of the court cases the stable owner could not add additional costs for the period during the court case. I'm not sure who thought that one up but as long as the stable owner is taking care of the said animal then there is a cost. Most stable owners/ranches/farmers have set costs of the daily costs of feeding and caring for the animals. This can really add up during the process and as far as the remaining funds being put in trust to the government after stable costs are paid for I disagree. Unless the owner has made arrangements to resolve this matter long before the stable owner has to take action then the funds belong to the stable owner. What is not included in the costs is the administration work to process all this paperwork, legal fees, time away from your business to resolve the matter. So it could add up. Also most court cases take up to 4 years to be resolved or to be signed off. During that time period there's a lot of expenses."<sup>32</sup>

A third respondent suggested that these costs could be based upon "Manitoba Agriculture Farm Production Costs".<sup>33</sup>

Since by section 4 a stable keeper is "responsible for any animals and effects detained", it seems only reasonable that an animal keeper can recover the costs of caring for the animals after the owner has been notified of the lien claim. This recommendation is also consistent with the proposals of the Alberta Law Reform Institute and the Uniform Law Conference of Canada in respect of commercial liens in general.<sup>34</sup>

Fifth, section 2 provides:

; and in addition to all other remedies provided by law has the same rights and privileges for exercising and enforcing the lien, so far as they applicable, as boarding house keepers and hotel keepers have or possess by virtue of *The Hotel Keepers Act*, so far as not inconsistent with, or provided by this Act.

It is not clear why this wording was included in the Act, although it appears to have its origins in the innkeeper's common law right to exert a lien over horses being housed at the inn. It is unique. None of the other Canadian Acts or comparable Manitoba Acts contain such

<sup>31</sup> Submission by Ron and Ruth Rob (December 31, 2010).

<sup>32</sup> Submission by Roy and Candice Kontzie (December 16, 2010).

<sup>33</sup> Submission by Michael Van Wallegham (December 20, 2010).

<sup>34</sup> ALRI Report, *supra* note 2 at 103; ULCC Report, *supra* note 2 at 24.

wording. The Commission recommends discontinuing this wording in the new Act, especially in light of Recommendation 11 below.

#### RECOMMENDATION 4

*The new Act should deal in separate sections with*

- *the provision of a specific possessory lien, subject to Recommendation 6, which includes charges for the cost of food, care, and accommodation incurred by the animal keeper after giving the owner notice of the lien claim, and without reference to The Hotel Keepers Act;*
- *the coming into effect of the lien at the commencement of the services giving rise to the lien but, if the services are not completed, the lien securing only the fair market value of the services provided;*
- *the priority of the lien; and*
- *the remedies for enforcing the lien.*

#### E. THE CARE OBLIGATION OF A LIEN CLAIMANT

Section 4 of *The Stable Keepers Act* states that a stable keeper who asserts a lien must “keep in his possession, and is responsible for, any animals and effects detained by him”. British Columbia’s *Livestock Lien Act* contains similar language.<sup>35</sup> The comparable sections in the *Animal Custom Care Regulations*<sup>36</sup> of Saskatchewan and the *Animal Keepers Act*<sup>37</sup> of Alberta are worded differently.

Section 4 of *The Stable Keepers Act* addresses both a stable keeper’s care obligation and the stable keeper’s remedy of sale. The Commission proposes that the care obligation be provided in a discrete section, with wording similar to that of section 4 of the *Animal Keepers Act*<sup>38</sup> of Alberta, but extending the animal keeper’s duty to also care for the gear that remains in his or her possession.

#### RECOMMENDATION 5

*The new Act should contain a provision similar to section 4 of the Alberta Animal Keepers Act.*

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<sup>35</sup> *Supra* note 10, s. 4(1).

<sup>36</sup> *Supra* note 12, s. 3.

<sup>37</sup> *Supra* note 7, s. 4.

<sup>38</sup> *Ibid.*



## F. REQUIREMENT OF POSSESSION

Possession of the chattel is the central requirement of the common law and statutory possessory liens. Continuous possession of the chattel serves two important functions, as described by the Alberta Law Reform Institute:

First, it provides evidence of the contract giving rise to the lien in the event of a dispute about the right to claim a lien. Second, it provides third parties with the means of determining the existence of the lien.<sup>39</sup>

At common law, a lien claimant loses the right to claim a lien if he or she gives up possession of the chattel. Even a temporary surrender of possession defeats the lien and subsequent re-acquisition by the lien claimant does not revive it.<sup>40</sup>

The application of this rule can be particularly onerous in respect of animal keepers because in the normal course of their business they are frequently asked to give up possession of an animal temporarily and take it back into their keeping at a later date.<sup>41</sup> It can also be impractical in the context of large herds of animals, the membership of which may change significantly over time. It may not be reasonable to require an animal keeper to maintain possession of each individual animal in respect of which food and services have been provided in such circumstances.

The recommendations of the Alberta Law Reform Institute would solve this problem in part by allowing for non-possessory liens. These recommendations include specific provisions for recording and registering non-possessory liens.<sup>42</sup>

In the Commission's view, a non-possessory lien, with its attendant requirements of a written acknowledgment of indebtedness and registration of the lien, is not practical in the context of the animal keeping industry in Manitoba.

The Commission recognizes, however, that there may often be good commercial reasons to permit an animal keeper to limit the lien to certain animals in his or her possession in satisfaction of the debt incurred in respect of other animals owned by the same person. Some of these reasons are described in *Twin Rivers Feed Lot Ltd. (Trustee of) v. V & B Feeds Ltd.*<sup>43</sup> In this case, Alberta Court of Appeal interpreted the *Livery Stable Keepers Act*<sup>44</sup> as allowing for an extension of the lien to any animals of an owner held by a stable keeper to cover bills for the

<sup>39</sup> ALRI Report, *supra* note 2 at 84.

<sup>40</sup> *Re Lehner* (1985), 4 P.P.S.A.C. 254 (Sask. Q.B.); *Pennington v. Reliance Motor Works Ltd.*, [1923] 1 K.B. 127.

<sup>41</sup> This is one of the bases on which judges deny stable keepers the right to claim a possessory lien at common law: see Brown, *supra* note 26 at 397.

<sup>42</sup> ALRI Report, *supra* note 2 at 79. The Uniform Law Conference of Canada made similar recommendations but excluded animal keepers from the purview of its report and from the *Uniform Liens Act*, 2000.

<sup>43</sup> (1996) Alta L. R. (3d) 36 (C.A.) (QL) [*Twin Rivers*].

<sup>44</sup> *Livery Stable Keepers Act*, R.S.A. 2000, c. L-14, repealed and replaced by the *Animal Keepers Act*, *supra*, note 7. The *Livery Stable Keepers Act* was substantially similar to the current Manitoba Act.

feeding and care of other animals belonging to the same owner but no longer in the animal keeper's possession.<sup>45</sup>

In the interest of commercial flexibility, the Commission recommends a provision that would expressly allow an animal keeper to limit the lien to certain animals in his or her possession in satisfaction of debt incurred for all animals that are or were in possession of the animal keeper and that are owned by the same owner. Under this provision, the animal keeper could retain possession of only some animals as security for payment of services in respect of other animals, owned by the same person, but no longer in the animal keeper's possession. The common law permits this practice in some circumstances provided the lien claimant's services are performed pursuant to a single contract.<sup>46</sup> However, a contract is not required in order to create an animal keeper's lien under the statute.<sup>47</sup> It may also often be difficult to establish whether services are provided under one or several contracts in the context of the animal keeping industry. Therefore, in the Commission's view, it is preferable to provide for a version of this rule by statute. This is the approach taken in section 3 of the *Alberta Animal Keepers Act*.<sup>48</sup> In this circumstance only, the Commission approves a form of general lien.

## RECOMMENDATION 6

*The new Act should contain a provision similar to section 3 of the Alberta Animal Keepers Act.*

## G. REMEDIES TO ENFORCE THE LIEN

The remedy of sale is a principal feature of the existing statutory lien legislation. It is important in part because it permits any surplus to be distributed appropriately and also preserves the lien claimant's right to sue the owner for any deficiency following sale.

The only remedy provided in *The Stable Keepers Act* and most other Canadian Acts is sale by public auction.<sup>49</sup> The difficulty with limiting the remedy to a public auction is that this often results in lower prices and greater costs. The following response to the Draft Consultation Report is relevant to this issue:

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<sup>45</sup> *Twin Rivers*, *supra* note 43 at para. 16. The trial judges made remarks consistent with this finding in *Stock v. Teske* (1996), 112 Man. R. (2d) 54 (Q.B.) (QL) [*Stock Q.B.*] at para. 51, *rev'd in part*, (1997), 123 Man. R. (2d) 173 (C.A.) (QL) and in *Ference Q.B.* *supra* note 1 at para. 13.

<sup>46</sup> This common law rule is described in *Brown*, *supra* note 26 at 400: "The doctrine may be expressed by saying that when several items of goods are delivered on a single contract the lien for the amount due on such contract extends in its entirety to each and every article delivered under that contract."

<sup>47</sup> See *Ference Q.B.*, *supra* note 1 at para. 13; see also *Twin Rivers*, *supra* note 43 at paras. 11 and 13.

<sup>48</sup> *Supra* note 7, s. 3.

<sup>49</sup> But see *supra* note 7, s. 6(2). The *Alberta Animal Keepers Act* permits the animal keeper to sell the animal or gear by public auction or in any other commercially reasonable manner.

*"The Stable Keepers Act:* refers to selling the said horse if payment has not been made for board and upkeep. But it does not allow the option of the stable owner to just keep the horse as full payment of the invoice due. In most cases where the owner refuses to pay the horse is much better off staying at the stable and being cared for then going through an auction mart. Which would be the case and said stable owner would only get foxmeat prices. If the horse was a registered animal there needs to be a clause in the Act allowing Canadian Livestock Records to transfer the registration papers. Usually this will not happen unless the original owner signs the transfer and if that person has not paid the invoice the chances of them signing a transfer is nil.

Suggestion: If someone does not pay their monthly invoice and it is at least 3 months overdue which on the average is approx. (\$400 x 3 = \$1200 plus GST) then stable owner should have the right to send a registered letter, which includes invoice and a deadline of two weeks to make full payment. (Ideally this should be done through a lawyer because you will need proof). If owner does not comply then said animal is now the property of stable owner and that individual has the right to either sell or keep the horse in question. This process also gives Canadian Livestock the right legal documents to transfer the registered paperwork to the new owner.

If you check out the Canadian Livestock Records website you will see many breeds both in horses and cattle where this process would help them."<sup>50</sup>

The following submission makes similar points:

"The act is a handy tool to encourage owners to pay their debts but in many cases the value of their animal when sold by auction goes nowhere near the potential value of the debt. A sport horse that is sound may well be worth 10s of thousands if sold privately. It is quite possible that the same horse sold at auction will, in this economic climate, fetch meat money which after the auctioneers commission and transport charges leave the stable keeper with an additional charge. In the case of horses, not all auctions of livestock will take horses at all auctions. There can be many months between selling opportunities. Normal livestock Auctions have now become the disposal route for unsound or low value horses destined for the meat trade. This delay has the potential of levelling further losses on the animal keeper.

I believe the act should make provision for the animal keeper to call in a provincially appointed valuer, who can set a reasonable financial value on the value of goods being held at a certain date. As of the date of the expiry period of the lien notice, the stable keeper should have the option to buy the horse themselves or sell privately for the amount set by the provincial valuer, deduct the amount of the lien and ongoing costs and

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<sup>50</sup> *Supra* note 32.



pay the balance to the owner or the province if the whereabouts of the owner is uncertain. This solution has the merit of being financially fairer to both the owner and the stable keeper. In addition it may well save a good horse unnecessary stress and abuse of going through the auction system. The owner should of course have the right to appeal the valuer's decision. This valuation process should be an additional alternative option available not a replacement for the auction process allowed for in the act.

Another issue is the notice period. It is industry standard to pay your board bill a month in advance and services and extras in arrears. If an owner wishes to remove a horse with immediate effect they may if they are willing to forgo the cost of a months stabling. Many dispute this payment in lieu of notice. Can the stable keepers act be used by the keeper to extract payment? The keeper may well have turned away a potential client due to lack of space which is the reason for the notice period.

Giving notice to owners that decide to drop off the radar can be problematical. The Act should include electronic communication methods for notification in addition to fax. In some cases there can be "communication" difficulties when owners do not have the necessary funding to pay off their debts!

In some cases the stable keeper's financial difficulties could put animals in the potential danger of neglect. The Act should give the stable keeper the option of handing the animal and the potential for extra debt to a third party, either a welfare organization or the provincial animal welfare authorities.<sup>51</sup>

The same point can be made respecting most, if not all, animals, except cattle and other animals raised either for food or their fur. In other words, public sale may be viable only for food and fur animals.

The Commission is persuaded that animal keepers should not be restricted to sale by public auction to deal with un-reclaimed animals. The Commission shares the view of both the Alberta Law Reform Institute and the Uniform Law Conference of Canada that lien claimants should also have the option of private sale to enforce their rights.<sup>52</sup> The Commission approves the approach taken in the Alberta *Animal Keepers Act*, which permits lien claimants to sell the animal and gear by public auction or in any other commercially reasonable manner, presumably including private sale.<sup>53</sup>

Moreover, the Commission is not persuaded that the animal keeper's remedy should be restricted to the sale of the animal. The Alberta Law Reform Institute recommends that lien

<sup>51</sup> Submission by Misty River Ranch (December 15, 2010).

<sup>52</sup> ALRI Report, *supra* note 2 at 102; *Uniform Liens Act 2000*, *supra* note 25, s. 19.

<sup>53</sup> *Supra* note 7, s. 2(2).

claimants have the option of retaining the chattel in satisfaction of the debt owed to them by the owner. The Commission believes it is appropriate to provide this option to animal keepers under the new Animal Keepers' Lien Act. This provision would expand a lien claimant's options beyond public or private sale to include keeping the animal or private placement with a rescue facility or an animal protection officer pursuant to *The Animal Care Act*.<sup>54</sup> Regarding private placement, the Commission notes that *The Animal Care Act* empowers the director to sell, give away, or destroy an abandoned or abused animal taken into custody.<sup>55</sup> If it is appropriate to empower the director to give away abandoned or abused animals, surely this is a reasonable remedy for an animal keeper, to avoid the slaughter of an un-reclaimed animal.

The Commission believes it is in the best interest of un-reclaimed animals to empower animal keepers to do what they think is most appropriate for such animals in the circumstances of each situation. This is achieved by providing the animal keeper with an option to retain the animal in satisfaction of the debt in appropriate circumstances. Under this provision, if the animal owner has not objected to the animal keeper's retention of the animal within a 30 day period, the owner's title is extinguished and title vests in the animal keeper.

## RECOMMENDATION 7

- (a) The new Act should provide that an animal keeper has the option of sale by public auction or in any other commercially reasonable manner, including private sale.*
- (b) The new Act should provide an animal keeper with the option of retaining the animal in satisfaction of the debt owed by the animal owner.*

## H. NOTICE REQUIREMENTS

*The Stable Keepers Act* does not contain a section setting out formal notice requirements in respect of the stable keeper's lien. As discussed in Section G above, the Commission is proposing that animal keepers have the choice of enforcing the lien by sale or keeping the animal and gear in satisfaction of the debt. The Commission recommends that an animal keeper must give notice of the lien and the proposed remedy, delivered personally or sent by regular mail, email or fax to the animal owner. The contents of the notice will depend on the proposed remedy, but will always contain certain core information including the identification of the animal, the amount owing, the proposed remedy and the identity of the animal keeper.

The Commission recognizes that, in some instances, the animal keeper may not have a current address or other information for the animal owner and that there may be other parties with a property interest in the animal, such as secured creditors, who are unknown to the animal keeper. For these reasons, the Commission also recommends that the notice be published in a newspaper having general circulation in the province of Manitoba.

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<sup>54</sup> *Supra* note 3.

<sup>55</sup> *Ibid.*, s. 15(3)(b); 18(4)(b).

In *Stock v. Teske*<sup>56</sup> the trial judge found that the stable keeper lost her right to claim a lien because she could not advise the animal owners of the charges owing "when she claimed her lien and for sometime thereafter."<sup>57</sup> *The Stable Keepers Act* and other comparable Canadian statutes are silent on this requirement, as are the secondary sources.<sup>58</sup> The Commission recommends that the notice of sale or intention to retain the animal state the dollar amount owing or the non-monetary compensation agreed to in respect of the care provided.

A further question concerns the appropriate period of time to be asserted in the notice within which the amount owing is to be paid or objection filed by an animal owner. The *Animal Products Act* of Saskatchewan provides for a payment period of 30 days;<sup>59</sup> the *Animal Keepers Act* of Alberta provides for 14 days;<sup>60</sup> the *Livestock Lien Act* of British Columbia provides for 3 months.<sup>61</sup> The Commission believes that 14 days is too short, 3 months is too long, and that a period of 30 days represents a reasonable balance between the rights of the animal owner and those of the animal keeper. The Commission recommends that the notice must state a 30 day period for redemption or objection, and the additional daily rate of care for the animal. Finally, the notice should refer to *The Animal Keepers' Lien Act*, pursuant to which the lien is claimed.

In *Ference v. Wohlers* there were two issues, the second of which was whether Wohlers's failure to post the Act as required by section 6 of *The Stable Keepers Act* resulted in the loss of his lien. Justice Scurfield and the Court of Appeal disagreed about whether the requirement to post the Act was mandatory or directory.<sup>62</sup> If mandatory, the failure to post the Act would result in Wohlers's loss of the right to a lien. If directory, the failure to post would not result in the loss of the lien.

For greater clarity, in respect of the notice of sale or notice of intention to retain the animal, the Commission is of the view that the requirement to deliver one or the other of these notices is mandatory. However, the Commission is aware that there may be instances of animal keepers, perhaps asserting a lien on their own without the assistance of a lawyer, being tripped up by less than strict compliance with the various formal requirements of the section. The section should therefore contain a final sub-section providing that the wording of the section shall be construed as requiring substantial compliance.

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<sup>56</sup> *Stock Q.B.* *supra* note 45.

<sup>57</sup> *Ibid.* at para. 51.

<sup>58</sup> Tyler, *supra* note 26; Brown, *supra* note 26.

<sup>59</sup> *Supra* note 6, s. 15.2(2).

<sup>60</sup> *Supra* note 7, s. 6(1).

<sup>61</sup> *Supra* note 10, s. 4(2).

<sup>62</sup> *Ference C.A.*, *supra* note 1.

## RECOMMENDATION 8

*(a) In the event of enforcement of the lien by sale, the new Act should contain a section requiring a notice in writing, to be delivered personally or sent by regular mail, email or fax to the animal owner, and to be published in a newspaper having general circulation in the province of Manitoba, and containing*

- *a description of the animal and, the gear, if any, over which the lien is asserted;*
- *the total dollar amount or non-monetary equivalent owing;*
- *the additional daily rate of care;*
- *a 30 day period for payment;*
- *the proposed method of sale;*
- *a reference to The Animal Keepers' Lien Act;*
- *the name, address and telephone number of the person giving notice;*
- *a statement that the requirement to give notice is mandatory; and*
- *a final sub-section providing that the wording of the section shall be construed as requiring substantial compliance.*

*(b) In the event the animal keeper chooses to retain the animal in satisfaction of the debt, the new Act should contain a section requiring a notice in writing to be delivered personally or sent by regular mail, email or fax to the animal owner, and to be published in a newspaper having general circulation in the province of Manitoba and containing*

- *a description of the animal and, the gear, if any, over which the lien is asserted;*
- *the total dollar amount or non-monetary equivalent owing;*
- *the additional daily rate of care;*
- *a 30 day period for payment;*
- *a statement of the animal keeper's intention to retain the animal and gear in satisfaction of the debt;*
- *a statement advising the person receiving notice of the right to make an objection within 30 days;*
- *a reference to The Animal Keepers' Lien Act;*
- *the name, address and telephone number of the person giving notice;*
- *a statement that the requirement to give notice is mandatory; and*
- *a final sub-section providing that the wording of the section shall be construed as requiring substantial compliance.*

## I. A JUDICIAL PROCESS

The *Animal Products Act* and *Animal Custom Care Regulations* of Saskatchewan provide for an arbitration process.<sup>63</sup> The *Animal Keepers Act* of Alberta allows anyone with an interest in

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<sup>63</sup> *Supra* note 6, ss. 15.2(1), 15.2(7)-15.2(15), 15.2(17)-15.2(18); *supra* note 12, s. 7.

animals or gear detained or sold pursuant to a lien claim to apply to the Court of Queen's Bench for a determination of various matters arising out of the operation of the Act.<sup>64</sup>

In a similar vein, the Commission recommends that an animal keeper, animal owner or any other person with a property interest in the animal, should be able to make an application to the Court of Queen's Bench within the 30 day payment or objection period. This would allow for the resolution of disputes concerning, among other things, the amount of debt owed, the appropriate remedy and the relative interests of all concerned parties in the animal or proceeds of sale.

## RECOMMENDATION 9

*The new Act should provide for application to be made to the Court of Queen's Bench by an animal keeper, animal owner or other person with a property interest in the animal, during the 30 day payment period after delivery of notice of sale or notice of intention to retain the animal or gear, concerning any matter pertaining to the lien.*

## J. POSTING THE ACT

Section 6 of the *Stable Keepers Act* provides:

### Copy of Act to be posted

6 Every stable keeper shall have a copy of this Act conspicuously posted up in the office, and in at least two other conspicuous places in his stable.

Some of the other Canadian Acts and comparable Manitoba Acts require posting of the relevant Act, while others do not.<sup>65</sup>

The Court of Appeal in *Ference* found that the "warning to a potential client that comes with ... a [posted] notice is the reasonable pre-condition for ... an exceptional statutory right, unavailable at common law."<sup>66</sup> One can infer from the absence of a repeal of section 6 in 1931, when the notice section of *The Hotel Keepers Act* was repealed, and in 1993, when the most recent amendment was made to *The Stable Keepers Act*, that the legislature has considered the notice requirement a salutary obligation. However, one respondent wrote:

Display of the Act is required by the legislation. This is not necessary and in many cases and environments is frankly impractical. Ignorance of

<sup>64</sup> *Supra* note 7, s. 12.

<sup>65</sup> Requiring posting: *The Threshers' Liens Act*, C.C.S.M. c. T60, s. 17; the *Livestock Lien Act*, *supra* note 10, s. 6. Not requiring posting: *The Garage Keepers Act*, C.C.S.M. c. G10; *The Warehousemen's Liens Act*, C.C.S.M., c. W20; the *Animal Products Act*, *supra* note 6 and the *Animal Custom Care Regulations*, *supra* note 12; the *Animal Keepers Act*, *supra* note 7. *The Hotel Keepers Act*, C.C.S.M. c. H150 originally required posting of the Act, but this requirement was removed by amendment in 1931.

<sup>66</sup> *Ference C.A.*, *supra* note 1 at para. 36.



the law is no defence in criminal court. Nor should it be in civilian cases.<sup>67</sup>

The Commission agrees that posting of the Act is unnecessary, if, as proposed in Recommendation 8, the notice of the animal keeper's lien must be delivered in writing and contain a reference to The Animal Keepers' Lien Act.

## **RECOMMENDATION 10**

***Section 6 of The Stable Keepers Act should not be continued in a new Act and a new Act should not contain a section requiring any posting of notice of the Act.***

## **K. APPLYING THE COMMON LAW**

As stated at the beginning of Chapter 2, animal keepers' lien legislation exists to extend the common law possessory lien to benefit animal keepers. There are myriad matters relating to liens that are not addressed in this report, including the effect of death or bankruptcy of the animal owner or animal keeper, running of the limitation on the animal keeper suing on the debt, tender by the animal owner, and the effect of clandestine removal of animals or gear. These matters can be left to the common law if it is made certain in the Act that the common law of possessory liens applies to animal keepers to the extent not changed by the Act.

## **RECOMMENDATION 11**

***The new Act should contain a section stating that the common law of possessory liens, to the extent not changed by the Act, applies to animal keepers.***

## **L. PUBLIC EDUCATION**

The new Animal Keepers' Lien Act will contain three very significant changes from *The Stable Keepers Act*, namely a prescribed form and content for notice, an option of retaining the animal in satisfaction of the debt, and a judicial process for an animal keeper, animal owner or other person with a property interest in the animal to make application to the Manitoba Court of Queen's Bench. These changes necessitate an educational effort targeted to animal keepers, agricultural associations, government agricultural officials, and the public who might avail themselves of the service of an animal keeper. This education should take the form of a news release for media throughout the province, presentations at agricultural gatherings throughout the

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<sup>67</sup> *Supra* note 51.

province, and a pamphlet sent to existing animal keepers, agricultural associations, and government agricultural officials, and made available to the public at municipal offices throughout the province.

#### **RECOMMENDATION 12**

*The Province must undertake an extensive educational program to inform the agricultural community of the new Act.*

## CHAPTER 4

### LIST OF RECOMMENDATIONS

1. *The Stable Keepers Act* should be repealed and replaced by an Act similar to that contained in Appendix D, embracing the following Recommendations. (p. 13)
2. The new Act should be titled *The Animal Keepers' Lien Act*. (p. 14)
3. The new Act should include the following definitions
  - "animal" means a non-human sentient being;
  - "animal keeper" means a person who for money or its equivalent keeps for any purpose an animal owned by another person;
  - "gear" means chattel and includes any vehicle, tack, furnishings, or container, left with and in the possession of an animal keeper relating to an animal over which a lien is claimed. (p. 16)
4. The new Act should deal in separate sections with
  - the provision of a specific possessory lien, subject to Recommendation 6, which includes charges for the cost of food, care, and accommodation incurred by the animal keeper after giving the owner notice of the lien claim, and without reference to the *Hotel Keepers Act*;
  - the coming into effect of the lien at the commencement of the services giving rise to the lien but, if the services are not completed, the lien securing only the fair market value of the services provided;
  - the priority of the lien; and
  - the remedies for enforcing the lien. (p. 20)
5. The new Act should contain a provision similar to section 4 of the *Alberta Animal Keepers Act*. (p. 20)
6. The new Act should contain a provision similar to section 3 of the *Alberta Animal Keepers Act*. (p. 22)
- 7.(a) The new Act should provide that an animal keeper has the option of sale by public auction or in any other commercially reasonable manner, including private sale.
- (b) The new Act should provide an animal keeper with the option of retaining the animal in satisfaction of the debt owed by the animal owner. (p. 25)
- 8.(a) In the event of enforcement of the lien by sale, the new Act should contain a section requiring a notice in writing, to be delivered personally or sent by regular mail, email or fax to the animal owner, and to be published in a newspaper having general circulation in the province of Manitoba, and containing



- a description of the animal and, the gear, if any, over which the lien is asserted;
  - the total dollar amount or non-monetary equivalent owing;
  - the additional daily rate of care;
  - a 30 day period for payment;
  - the proposed method of sale;
  - a reference to The Animal Keepers' Lien Act;
  - the name, address and telephone number of the person giving notice;
  - a statement that the requirement to give notice is mandatory; and
  - a final sub-section providing that the wording of the section shall be construed as requiring substantial compliance.
- (b) In the event the animal keeper chooses to retain the animal in satisfaction of the debt, the new Act should contain a section requiring a notice in writing to be delivered personally or sent by regular mail, email or fax to the animal owner, and to be published in a newspaper having general circulation in the province of Manitoba and containing
- a description of the animal and, the gear, if any, over which the lien is asserted;
  - the total dollar amount or non-monetary equivalent owing;
  - the additional daily rate of care;
  - a 30 day period for payment;
  - a statement of the animal keeper's intention to retain the animal and gear in satisfaction of the debt;
  - a statement advising the person receiving notice of the right to make an objection within 30 days;
  - a reference to The Animal Keepers' Lien Act;
  - the name, address and telephone number of the person giving notice;
  - a statement that the requirement to give notice is mandatory; and
  - a final sub-section providing that the wording of the section shall be construed as requiring substantial compliance. (p. 27)
9. The new Act should provide for application to be made to the Court of Queen's Bench by an animal keeper, animal owner or other person with a property interest in the animal, during the 30 day payment period after delivery of notice of sale or notice of intention to retain the animal or gear, concerning any matter pertaining to the lien. (p. 28)
10. Section 6 of *The Stable Keepers Act* should not be continued in a new Act and a new Act should not contain a section requiring any posting of notice of the Act. (p. 29)
11. The new Act should contain a section stating that the common law of possessory liens, to the extent not changed by the Act, applies to animal keepers. (p. 29)
12. The Province must undertake an extensive educational program to inform the agricultural community of the new Act. (p. 30)

This is a report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c.L95, signed this 5th day of August, 2011.

**"Original Signed by"**  
Cameron Harvey, President

**"Original Signed by"**  
John C. Irvine, Commissioner

**"Original Signed by"**  
Gerald O. Jewers, Commissioner

**"Original Signed by"**  
Perry W. Schulman, Commissioner

## APPENDIX A

### AMENDMENTS TO THE STABLE KEEPERS ACT

- (i) the title of the Act has been shortened;<sup>1</sup>
  - (ii) a definition section has been added;<sup>2</sup>
  - (iii) the order of the sections was re-arranged in 1891;<sup>3</sup>
  - (iv) two sections of the 1884 Act were deleted:<sup>4</sup>
6. The provisions of "The Inn-keepers and Boarding-House Keepers' Act," shall, from and after the passing of this Act, and with reference to animals and effects as above mentioned, apply to livery and boarding stable keepers, and to the keepers of boarding and sale stables, in so far as the said Act may be applicable.
7. The same privileges, rights and exemptions shall hereafter apply to persons leaving animals, furniture, vehicles, and the gear thereunto belonging to be kept, boarded or cared for at any such stable as are made to apply to lodgers and boarders under the Act passed at the last session of the Legislature, of this Province, Chaptered 45, and intituled "an Act respecting Boarders and Lodgers," so far as the provisions thereof may be applicable in the premises.

Section 6 appears to have been redundant to the current section 2, which was section 4 in the 1884 Act;

- (v) the several lines of section 3 of the current Act, below:

"... and the right of detention by any keeper of a livery stable of any animal has priority over, and is not subject to, any existing lien, chattel mortgage, bill of sale, or other charge or encumbrance of whatever nature or kind, affecting the animal."

were added in 1899;<sup>5</sup> and

- (vi) there have been some incidental changes in wording and housekeeping changes, such as "security interest, as defined in *The Personal Property Security Act*" for "chattel mortgage" in section 3 of the current Act.<sup>6</sup>

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<sup>1</sup> R.S.M. 1891, c. 91.

<sup>2</sup> R.S.M. 1913, c. 183.

<sup>3</sup> *Supra*, note 1.

<sup>4</sup> Section 7 was deleted in the 1902 revised version of the Act, R.S.M. 1902, c. 159, and s. 6 in the 1940 revised version, R.S.M. 1940, c. 198.

<sup>5</sup> S.M. 1899, c. 18.

<sup>6</sup> S.M. 1993, c. 14, s. 89.

## **APPENDIX B**

### **OTHER LEGISLATION**

#### **Ontario: *Innkeepers Act*<sup>1</sup> (Section 3)**

##### **Lien on horses and carriages**

3. (1) The keeper of a livery stable or a boarding stable has a lien on every horse or other animal boarded at or carriage left in the livery stable or boarding stable for reasonable charges for boarding and caring for the horse, animal or carriage.

##### **Lien on horses, etc., and power to sell**

(2) An innkeeper, livery-stable keeper or boarding-stable keeper who has a lien upon a horse, other animal or carriage for the value or price of any food or accommodation supplied, or for care or labour bestowed thereon, has, in addition to all other remedies provided by law, the right, in case the same remains unpaid for two weeks, to sell by public auction the horse, animal or carriage on giving two weeks notice of the intended sale by advertisement in a newspaper published in the municipality in which the inn, livery stable or boarding stable is situate or, in case there is no newspaper published in the municipality, in a newspaper published nearest to the inn, livery stable or boarding stable.

#### **Saskatchewan: *Animal Products Act*<sup>2</sup> (Sections 15.1 & 15.2)**

##### **Animal keeper's lien**

15.1(1) In this section and in section 15.2, "animal keeper" means a person who for money or its equivalent stables, feeds, boards or cares for animals.

(2) Every animal keeper has a lien on any animal for the price of food, care, attendance, accommodation, treatment or services furnished for that animal and, in addition to all other remedies provided by law, may detain in his custody and possession and sell, subject to section 15.2 and the regulations, the animal of any person who is indebted to him for feeding, grazing, sheltering, housing, confining, boarding, training, exercising, treating or caring for that animal..

(3) The right under subsection (2) has priority over and is not subject to any existing lien, security interest, purchase-money security interest or any other charge or encumbrance affecting that animal.

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<sup>1</sup> R.S.O. 1990, c. I-7.

<sup>2</sup> R.S.S. 1978 (Supplement), c. A-20.2.

**Resolution of animal keeper's lien by arbitration or otherwise**

15.2(1) In this section and in section 18:

- (a) "arbitrator" includes an arbitral tribunal composed of more than one arbitrator;
- (b) "holdback" means that portion of the proceeds of sale to be deducted by the market operator pursuant to clause (5)(b) and held pending the outcome of the dispute between the parties;
- (c) "market operator" means the owner or person in charge of a stockyard or auction market where livestock are held for sale;
- (d) "party" means:
  - (i) an animal keeper; or
  - (ii) a person who is indebted to an animal keeper;
- (e) "person who is indebted to an animal keeper" means a person who is indebted to an animal keeper for the price of food, care, attendance, accommodation, treatment or services furnished for an animal.

(2) If an animal keeper detains an animal pursuant to section 15.1, the person who is indebted to the animal keeper may reclaim the detained animal by paying his or her indebtedness to the animal keeper within 30 days from the day of the commencement of detention.

(3) If the person who is indebted to the animal keeper does not reclaim the animal within the 30-day period mentioned in subsection (2), the animal keeper may offer the animal for sale to recover costs with respect to the lien and the detention.

(4) A sale pursuant to subsection (3) must be by public auction, conducted in accordance with the regulations.

(5) If an animal is sold by public auction pursuant to this section, the market operator:

- (a) may, subject to the regulations, deduct from the proceeds of the sale any expenses of the market operator respecting the sale of the animal;
- (b) shall:
  - (i) deduct from the balance of the proceeds of sale that remain after a deduction pursuant to clause (a), if any, the amount claimed by the animal keeper to be owing to the animal keeper pursuant to the lien and the detention; and
  - (ii) hold the amount deducted pursuant to subclause (i) in an interest-bearing account for 30 days after the date of the sale; and
- (c) shall pay the balance of the proceeds of sale that remain after deduction pursuant to clause (b), if any, to the person who is indebted to the animal keeper.

(6) Any interest earned on the holdback during the 30-day period mentioned in subsection (5), or during any period in which the holdback is held by the department pursuant to subsection (9), is deemed to be part of the holdback.

(7) If a person who is indebted to an animal keeper disputes the amount claimed by the animal keeper, the person who is indebted to the animal keeper may require that the dispute be referred to arbitration by serving, within 30 days after the date of a sale pursuant to subsection (3), a notice of arbitration, in the form and manner prescribed in the regulations, on:

- (a) the animal keeper; and
- (b) the market operator.

(8) If the person who is indebted to the animal keeper does not serve a notice of arbitration within the 30-day period mentioned in subsection (7), the market operator shall pay the holdback to the animal keeper.

(9) If the person who is indebted to the animal keeper serves a written notice of arbitration within the 30-day period mentioned in subsection (7), the market operator shall pay the holdback to the department, to be held by the department in an interest-bearing account pending the outcome of the dispute.

(10) For the purposes of this section, arbitrators are to be appointed and arbitration proceedings are to be conducted in the manner and according to the procedures set out in the regulations.

(11) Either party may appeal the decision of the arbitrator to the Court of Queen's Bench on a question of law.

(12) An appeal to the Court of Queen's Bench must be made within 30 days after the date of the arbitrator's decision.

(13) An appeal to the Court of Queen's Bench is to be by notice of motion.

(14) The party making the appeal shall:

- (a) serve a copy of the notice of motion on the other party to the dispute; and
- (b) notify the minister of the appeal, in writing.

(15) The decision of the Court of Queen's Bench on an appeal pursuant to this section is final.

(16) The department shall pay out the holdback in accordance with the decision of the arbitrator or the Court of Queen's Bench, or in accordance with the agreement reached by the parties, as the case may be, after:

- (a) the parties notify the minister in writing that they have resolved their dispute;
- (b) the time for making an appeal pursuant to subsections (11) to (14) has expired and the minister has not been notified in writing within that time that an appeal has been made; or
- (c) an appeal has been made to the Court of Queen's Bench and that court has rendered its decision.

(17) All costs of an arbitration are to be borne equally by the parties.

(18) Subject to the regulations, The Arbitration Act, 1992 does not apply to arbitrations to be conducted pursuant to this section.

### **Saskatchewan: Animal Custom Care Regulations<sup>3</sup> (Sections 1-8)**

1 These regulations may be cited as The Animal Custom Care Regulations, 2006.

#### **Interpretation**

2(1) In these regulations:

- (a) "Act" means The Animal Products Act;
- (b) "animal keeper" has the same meaning as in subsection 15.1(1) of the Act;
- (c) "lien" means a lien pursuant to subsection 15.1(2) of the Act;
- (d) "market operator" has the same meaning as in clause 15.2(1)(c) of the Act;
- (e) "owner" includes any person acting for or on behalf of the owner of an animal.

(2) These regulations apply to any animal of the equine species, any animal of the bovine species or any sheep, goat, swine or interspecies hybrid of such animals, including a domestic game farm animal as defined in The Domestic Game Farm Animal Regulations.

#### **Proper care of animals**

3(1) Every animal keeper must, while he or she has custody of an animal, supply the animal with any sustenance, shelter and care to which the owner and the animal keeper agreed.

(2) Every animal keeper who exercises the right of detention pursuant to section 15.1 of the Act shall keep in his or her possession and be responsible for the proper care of the detained animal for the period of detention.

#### **Sale by public auction**

4(1) To sell an animal by public auction pursuant to section 15.2 of the Act, the animal keeper must:

- (a) subject to subsection (6), deliver a notice of sale to the owner at least seven days before the sale, by personal delivery or registered mail to the owner's last known address;
- (b) post a copy of the notice of sale for at least seven consecutive days before the sale:
  - (i) at the premises where the sale is to be held;
  - (ii) in the office of the municipality in which the

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<sup>3</sup> 2006, R.R.S. c. A-20.2, Reg.11.



- animal is detained; and
- (iii) in one other conspicuous place within the municipality in which the animal is detained; and
- (c) provide a copy of the notice of sale to an inspector at the public auction before the animal is sold.

(2) A public auction where an animal is to be sold pursuant to section 15.2 of the Act must be a regularly scheduled sale by a licensed dealer as defined in The Livestock Dealer Regulations, 1995.

(3) Any animal to be sold at a public auction pursuant to section 15.2 of the Act must be listed in the sale catalogue if one is published for that sale.

- (4) The notice of sale mentioned in subsection (1) must state:
- (a) the name of the owner of the animal, if known;
  - (b) the amount for which a lien is claimed;
  - (c) a description of the animal;
  - (d) the name of the animal keeper;
  - (e) the name of the licensed dealer;
  - (f) the location where the animal will be offered for sale; and
  - (g) the date of the sale.

(5) If an animal keeper is not able to deliver a notice of sale to the owner pursuant to clause 4(1)(a) because the owner's whereabouts are unknown, the animal keeper must make reasonable inquiries to locate the owner.

(6) If the animal keeper is not able to locate an owner after making reasonable inquiries, he or she can proceed with the sale as if the notice of sale had been delivered to the owner.

### **Manifest**

5 If an animal is sold by public auction pursuant to the Act and a manifest is required with respect to that animal pursuant to The Livestock Inspection and Transportation Regulations, 1978, being Saskatchewan Regulations 242/78, the animal keeper must ensure that the manifest is completed in the owner's name with the animal keeper identified as the contributor.

### **Statement regarding disposition**

6(1) If an animal is sold by public auction pursuant to section 15.2 of the Act, the market operator must provide a written statement showing the disposition of the proceeds from the sale of the animal:

- (a) to the owner; or
- (b) if the owner's whereabouts are unknown after reasonable inquiry, to the administrator or clerk of the municipality in which the animal was sold.

- (2) The written statement mentioned in subsection (1) is to be delivered personally or by registered mail.

### **Arbitrations**

7 The Arbitration Act, 1992 applies to arbitrations pursuant to section 15.2 of the Act.

### **Regulations to be available**

8 Every animal keeper shall keep a copy of these regulations conspicuously posted at the premises the animal keeper owns or operates.

## **Alberta: *Animal Keepers Act*<sup>4</sup>**

### **Definitions**

1 In this Act,

- (a) “animal” means cattle, horses, swine, sheep, bison, deer, elk, goats, mules and asses;
- (b) “animal keeper” means a person who receives payment for boarding, feeding or caring for an animal that is owned by another person;
- (c) “debt” means liability for
  - (i) the cost of boarding, feeding or caring for an animal, or
  - (ii) the cost of storing gear;
- (d) “gear” means
  - (i) tack and equipment used for riding, driving, showing or caring for animals, and
  - (ii) stock trailers, horse trailers, sleighs, buggies and carriages;
- (e) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (f) “owner of the animal or gear” means any person who has an interest in the animal or gear.

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<sup>4</sup> S.A. 2005, c. A-40.5.

### **Lien on animals and gear**

2(1) An animal keeper has a lien on an animal and gear for the debt incurred in relation to the animal and gear.

(2) In addition to all other remedies provided by law, an animal keeper may detain in the animal keeper's custody and possession the animal and any gear in relation to the animal and may sell the animal or gear by public auction or in any other commercially reasonable manner.

(3) An animal keeper's right to detain and sell an animal or gear has priority over and is not subject to any other existing lien, security interest as defined in the *Personal Property Security Act* or other charge or encumbrance of whatever nature or kind relating to that animal or gear.

(4) An animal keeper may waive any of the animal keeper's rights under this Act in whole or in part by stating that waiver in writing and signing it.

### **Option to limit lien**

3(1) When an animal keeper has a lien on more than one animal or gear belonging to the same owner, the animal keeper may choose to limit the lien to one or some of the animals or gear towards satisfaction of the debt incurred for all of the owner's animals or gear that are or were in the animal keeper's custody and possession.

(2) When the animal keeper chooses to limit the lien under subsection (1), the animal keeper may

(a) release the remaining animals or gear, free and clear of the lien, to the owner of the animals or gear, or

(b) if agreed to by the owner, retain custody and possession of the remaining animals or gear.

(3) When the animal keeper chooses to limit the lien under subsection (1), the animal keeper may sell the animal or those animals or gear under this Act and apply the proceeds of the sale to the debt incurred for all of the owner's animals or gear that are or were in the animal keeper's custody and possession.

(4) On the day the owner agrees that the animal keeper is to retain custody and possession of the remaining animals or gear under subsection (2)(b), the animal keeper acquires a new lien under section 2 with respect to those animals or gear.

### **Care of detained animals and gear**

4 When an animal keeper detains an animal or gear under section 2, the animal keeper

- (a) must keep the animal or gear in the animal keeper's custody and possession, and
- (b) is responsible for the proper care of the animals in accordance with accepted industry standards.

**Time the debt is incurred**

- 5 The debt incurred by an owner of an animal or gear is incurred on the later of
- (a) the date boarding, feeding or caring for the animal or gear commences, and
  - (b) if there is an agreement to pay, the date specified in that agreement.

**Discharge of the debt**

6(1) The owner of an animal or gear must discharge a debt within 14 days of the date on which the debt is incurred.

(2) If the owner fails to discharge the debt under subsection (1), the animal keeper may sell the animal or gear by public auction or in any other commercially reasonable manner on providing notice of the sale under sections 7 to 9.

**Notice if owner known**

7(1) If the owner of an animal or gear is known, the animal keeper must give at least 14 days' notice of the proposed sale of the animal or gear

- (a) to the owner by
  - (i) personal service,
  - (ii) registered mail sent to the address provided by the owner or the person who brought the animal or gear to the animal keeper, or
  - (iii) fax to the fax number provided by the owner or the person who brought the animal or gear to the animal keeper,
- and
- (b) if the animal is cattle or a horse, to the Minister.

- (2) If a delegated authority is established under the *Livestock Identification and Commerce Act*, the notice of sale under subsection (1)(b) must be provided to the delegated authority instead of the Minister.

#### **Notice if owner not known**

8(1) If the owner of an animal or gear is not known, the animal keeper must, at least 14 days before the proposed sale of the animal or gear,

- (a) publish a notice of the sale in a newspaper having general circulation in the place where the animal keeper's place of business is located, and
- (b) if the animal is cattle or a horse, provide notice of the sale to the Minister.

(2) If a delegated authority is established under the *Livestock Identification and Commerce Act*, the notice of sale under subsection (1)(b) must be provided to the delegated authority instead of the Minister.

#### **Notice of sale**

9 A notice of sale under section 7 or 8 must include the following:

- (a) the method of the proposed sale;
- (b) the date and time of the sale;
- (c) the address and name of the place where the animal or gear will be sold;
- (d) the name of the owner or the person who brought the animal or gear to the animal keeper, if known;
- (e) the amount for which a lien is claimed;
- (f) a description of the animal or gear;
- (g) the name of and contact information for the animal keeper.

#### **Application of proceeds of sale**

10(1) If an animal or gear is sold under section 6(2), the proceeds of sale must be paid in the following order:

- (a) to the animal keeper for expenses incurred in detaining, transporting, advertising and selling the animal or gear;

(b) in satisfaction of the lien of the animal keeper.

(2) If a balance remains after the proceeds of sale have been paid under subsection (1), the balance of the proceeds of sale shall be paid

(a) if only one person with an interest in the animal or gear that was sold claims the balance of the proceeds of sale within 7 days from the date of the sale, to ~~that~~ person, or

(b) to the Minister

(i) if more than one person with an interest in the animal or gear that was sold claims the balance of the proceeds of sale within 7 days from the date of the sale, or

(ii) if no person with an interest in the animal or gear that was sold claims the balance of the proceeds of sale within 7 days from the date of the sale.

(3) Notwithstanding subsections (1) and (2), the proceeds of sale must be paid into court as directed by the court if an application is made under section 12.

#### **Disposition of balance of proceeds of sale**

11(1) If the balance of the proceeds of sale are paid to the Minister under section 10(2)(b), the Minister must

(a) if more than one person claims the balance of the proceeds of sale under section 10(2)(b)(i), distribute the balance of the proceeds of sale as the Minister considers appropriate, or

(b) if no person claims the balance of the proceeds of sale within 7 days of the date of the sale,

(i) retain the balance of the proceeds of sale, on behalf of any person with a right to make a claim, for one year from the date the Minister receives the balance of the proceeds of sale, and

(ii) on the expiration of the one-year period referred to in subclause (i), pay the balance of the proceeds of sale into the General Revenue Fund.

(2) On payment of the balance of the proceeds of sale into the General Revenue Fund under subsection (1)(b)(ii), any person's claim to that balance of the proceeds of sale is extinguished.



### **Application to court**

12(1) Any person who has an interest in an animal or gear that has been detained or sold under this Act may apply to the Court of Queen's Bench for a determination of the rights of the parties, and the Court may make any order it considers necessary to give effect to those rights where any question arises with respect to any one or more of the following:

- (a) the amount of the lien or the right of any person to a lien;
- (b) the circumstances surrounding the sale;
- (c) the application of the proceeds of sale under section 10;
- (d) the disposition of the balance of the proceeds of sale under section 11;
- (e) any other matter arising out of the operation of this Act.

(2) When an application is made under subsection (1), all or part of the proceeds of sale may be paid into court and the lien is discharged against the animal or gear and becomes instead a charge on the amount paid into court with the same priority as if the lien continued.

(3) Subject to section 2(3), persons are entitled to the balance of the proceeds of sale according to their rights and priorities established under the *Personal Property Security Act* and other applicable legislation.

(4) An application made under subsection (1) must be made within one year and one week after the date of the sale of the animal or gear.

### **Transitional**

13(1) In this section, "former Act" means the *Livery Stable Keepers Act*.

(2) A lien that is created under the former Act continues as if the former Act were not repealed, and the former Act continues to apply in respect of those liens.

14 (*This section amends the Possessory Liens Act; the amendment has been incorporated into that Act.*)

### **Repeal**

15 The *Livery Stable Keepers Act*, R.S.A. 2000 cL-14, is repealed.

## **British Columbia: *Livestock Lien Act*<sup>5</sup>**

### **Definitions**

1 In this Act:

"cattle" includes any horse, mule, ass, swine, sheep or goat, or animal of the bovine species, by whatever technical or familiar name it is known;

"livestock" means cattle.

### **Lien on cattle**

2 Keepers of livery, boarding or sale stables and persons who feed and care for cattle for compensation have a lien on any cattle and any effects left with them by the owner of the cattle for the value or price of food, care, attendance or accommodation furnished for the cattle.

### **Cattle or effects of debtor may be detained**

3 A keeper of a livery, boarding or sale stables and a person who feeds and cares for cattle for compensation may detain in the keeper's custody and possession, before they have been removed out of his or her custody and possession, but not afterwards, any cattle, vehicle, harness, furnishings or other gear, or personal effects of another person who is indebted to him or her for stabling, boarding or caring for the cattle.

### **Responsibility for detained cattle and effects and power to sell**

4 (1) Keepers of livery, boarding or sale stables and persons who feed and care for cattle for compensation must keep in their possession and are responsible for any cattle and effects detained by them for the full period of the detention, unless they are released sooner.

(2) If the owner does not reclaim and release the cattle and effects within 3 months from the start of the period of detention, the person detaining them

(a) may sell them by public auction, and

(b) after retaining payment for stabling, boarding or caring for the cattle and the costs of sale, must pay to the owner of the cattle and effects any balance of the price.

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<sup>5</sup> R.S.B.C. 1996, c. 272.

**Disposition of balance of proceeds if owner not found**

5 (1) If the owner cannot be found, the balance must be paid to a registrar of the Supreme Court within the judicial district in which the sale takes place, to be kept for the owner for one year.

(2) If the owner does not appear or claim the amount by the end of the one year period, the amount must be paid into the consolidated revenue fund.

**Copy of lien, detention and sale provisions to be posted in office and stable**

6 It is the duty of keepers of livery, boarding or sale stables to have a copy of sections 2, 3 and 4 conspicuously posted up in their offices and in at least 2 other conspicuous places in their stables.

## **APPENDIX C**

### **COMPARABLE LEGISLATION**

#### ***The Threshers' Liens Act*<sup>1</sup> (Sections 2, 3, 8, 9 & 17)**

##### **Retention of grain to secure payment of charges**

2       Where a thresher threshes, or causes to be threshed, grain of any kind for a farmer at or for a fixed price or rate of remuneration, the thresher may retain a quantity of the grain for the purpose of securing payment of the price or remuneration.

##### **Quantity that may be retained**

3       The quantity of grain that may be so retained is a sufficient amount, computed at the fair market value thereof, less the reasonable cost of hauling the grain to, and delivering it at, the nearest available market, to pay when sold for the threshing of all grain so threshed within 30 days prior to the date when the right of retention is asserted.

##### **Sale of retained grain**

8(1)   The thresher who asserts the right of retention may forthwith house or store the grain so retained in his own name, and if, at the expiration of five days from the giving of notice in writing to the farmer that the right of retention is asserted, the price or remuneration for the threshing is not paid to the thresher or into court as hereinafter provided he may sell the grain at a fair market price.

##### **Application of proceeds**

8(2)   The proceeds thereof shall be applied first in payment of the reasonable cost of transporting the grain to market, and next in payment of the price or remuneration for threshing, and the balance then remaining, if any, shall be paid on demand to the owner of the grain or his assigns.

##### **Thresher to sell grain in 60 days**

9(1)   The grain so retained shall be sold within 60 days after the right of retention is asserted, unless the owner thereof consents in writing to the grain being held unsold for a longer time.

##### **Accounting for sale**

9(2)   Within 15 days after the sale of the grain the thresher shall render to the farmer a statement showing the threshing bill, the number of bushels of grain

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<sup>1</sup> C.C.S.M. c. T60.

retained, the price realized for it, the charges arising from the removal, storage, insurance, and the like, of the grain and the balance if anything owing by one party to the other.

#### **Copy of Act to be affixed to machine**

17(1) A copy of this Act, furnished by the Queen's Printer, shall be kept affixed to every threshing machine while being operated anywhere in the province.

#### **Offences**

17(2) The person in charge of operating the machine shall see that this section is observed, and every person who wilfully neglects that duty is guilty of an offence and is liable, on summary conviction, to a fine not exceeding \$10.; and any person who wilfully defaces or destroys the copy of this Act so affixed to the machine is guilty of an offence and is liable, on summary conviction, to a fine not exceeding \$10.

### ***The Garage Keepers Act*<sup>2</sup> (Sections 2, 3, 4, 9, 10, 11, 12 & 13)**

#### **Garage keeper's lien**

2 Subject to subsection 5(6), every garage keeper has a lien upon every motor vehicle or farm vehicle for service rendered upon it by the garage keeper to an amount not exceeding the charge, price, or consideration therefor.

#### **Right of detention and priority**

3 Where a garage keeper has in his custody or possession a motor vehicle or farm vehicle, or any part thereof, or accessory or equipment pertaining thereto that belongs to a person who is indebted to him for any service, and, subject to subsection 5(1), the garage keeper has had such custody or possession since the time the service was rendered, he may detain it in his custody or possession; and, subject to section 8, the right of detention provided by this section has priority over, and is not subject to, any lien, security interest, as defined in *The Personal Property Security Act*, bill of sale, or other charge or encumbrance of whatever nature or kind, upon or in respect of the motor vehicle, farm vehicle, or part, accessory, or equipment, pertaining thereto, existing at the time of the detention except a lien under this Act with respect to which a financing statement has been registered as provided herein.

#### **Responsibility of garage keeper**

4 Every garage keeper shall keep in his possession, and is responsible for, any motor vehicle and effects detained by him for the full period of the detention, unless they are sooner released. ...

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<sup>2</sup> C.C.S.M. c. G10.

### **Power of sale**

9 Where a motor vehicle or farm vehicle, or part, accessory or equipment pertaining thereto, has been seized under section 7, or where a motor vehicle or farm vehicle, or part, accessory or equipment pertaining thereto has been detained under section 3, if, after the expiration of the period mentioned in section 10, indebtedness with respect to which the lien arose has not been paid, the garage keeper may sell the motor vehicle or farm vehicle, or part, accessory or equipment at public auction.

### **When vehicle may be sold**

10 The sale as aforesaid may be held at any time after the expiration of 60 days after the day on which the notice is given to the owner under section 12.

### **Procedure for sale by auction**

11(1) Before any such sale is held, the garage keeper shall insert in one issue of *The Manitoba Gazette*, and post and keep posted during the period of at least two weeks on the outside of a front door of his garage, a notice of the intended sale, stating the name, so far as known, of the owner of any motor vehicle or farm vehicle, or part, accessory, or equipment pertaining thereto to be sold, a general description of the motor vehicle or farm vehicle, or part, accessory, or equipment pertaining thereto to be sold, the time and place of sale, and the name of the person who is to act as auctioneer.

### **Notice to other security holders**

11(2) Where a garage keeper intends to sell a motor vehicle under section 9, he shall, at least two weeks before the date of the intended sale, give notice of the intended sale in writing to any person who has registered in The Personal Property Registry established under *The Personal Property Security Act* a financing statement that relates to the motor vehicle or an accession thereto which is indexed in the registry under the serial number of the motor vehicle.

### **Application of proceeds**

11(3) After the sale the garage keeper shall apply the proceeds of the sale in payment of the amount due to him as aforesaid, the cost of accommodation during the period of detention at the rates agreed upon for accommodation, the cost of seizure, where the article to be sold has been seized under section 7, the costs of advertising, the fee of the auctioneer, and all other reasonable costs of the sale.

### **Disposition of surplus, if any**

11(4) The garage keeper shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor; and, if application therefor is not forthwith made, he shall immediately pay the surplus into the Court of Queen's Bench to be kept there for the person entitled for one year, after which



time, if that person does not appear or claim the amount so kept, it shall be paid over to the Minister of Finance and form a part of the Consolidated Fund.

#### **Effect of sale on other security**

11(5) Where a garage keeper sells a motor vehicle or farm vehicle, or a part, accessory or equipment pertaining thereto, under this section, the sale discharges the lien of the garage keeper and, if the sale is made to a bona fide purchaser for value, discharges also any security interest in the motor vehicle or farm vehicle, or part, accessory or equipment pertaining thereto, in respect of which a financing statement has been registered under *The Personal Property Security Act* other than a financing statement in respect of an interest, charge, lien or encumbrance to which the garage keeper's lien is subject under section 8, and terminates the interest of the owner in the motor vehicle or farm vehicle or part, accessory or equipment pertaining thereto.

#### **Notice to debtor**

12(1) Unless, at the time of, or within a reasonable time after

(a) the detention of the motor vehicle, farm vehicle, accessory or equipment under section 3; or

b) the seizure of the motor vehicle, farm vehicle, accessory or equipment under section 7;

the garage keeper gives the owner of the vehicle a notice in Form 3 of the Schedule, or a notice to like effect, the garage keeper is not entitled to sell the motor vehicle, farm vehicle, accessory or equipment, as the case may be, in accordance with the provisions of this Act.

#### **Notice by registered mail**

12(2) Where, at the time of receiving the motor vehicle, farm vehicle, accessory or equipment for service or at any time prior to the completion of the service, the garage keeper has given written notice to the owner that he intends to rely upon the rights of a lienholder under this Act in collecting the account for the service, the notice required under subsection (1) may be given by sending it to the owner by registered mail to the latest address of the owner known to the garage keeper and in that case the notice shall be conclusively deemed to have been given to the owner on the third day after the day on which it is posted.

#### **Definitions**

13(1) In this section,

"court" means the Court of Queen's Bench; (« tribunal »)

"judge" includes a court officer as defined in *The Court of Queen's Bench Small Claims Practices Act*; (« juge »)

**"owner"** means the owner of a vehicle; (« propriétaire »)

**"vehicle"** means a motor vehicle or farm vehicle or any part, accessory or equipment pertaining thereto. (« véhicule »)

#### **Payment into court**

13(2) Notwithstanding any other provision of this Act, where a garage keeper has a lien on a vehicle and

- (a) has detained the vehicle under section 3; or
- (b) has seized the vehicle under section 7; or
- (c) has the right to seize the vehicle under section 7;

and the owner disputes the indebtedness with respect to which the lien arose, notwithstanding that the owner has signed an acknowledgment of the indebtedness as required under subsection 5(1), the owner may pay the amount of the alleged indebtedness, together with 10% thereof or \$50., whichever is the lesser, into court and, upon the garage keeper being served with the notice of the payment, the lien ceases to exist.

#### **Form of notice of payment**

13(3) The notice of payment may be in Form 2 of the Schedule, and shall state

- (a) the name and address of the garage keeper claiming the lien;
- (b) the name and address of the owner of the detained vehicle;
- (c) a description of the detained vehicle, sufficient for its identification;
- (d) the amount paid into court;
- (e) that the owner disputes the amount claimed and the grounds of the dispute; and
- (f) that the garage keeper is ordered to deliver the vehicle to the owner;

and shall have annexed to it a statement of the garage keeper's charges showing the amount claimed and how it is calculated or, where the garage keeper has not delivered a statement of his charges to the owner, shall have annexed to the notice an affidavit of the owner setting out the amount claimed by the garage keeper.

#### **Statement of charges**

13(4) The statement of charges required under subsection (3) shall be furnished by the garage keeper upon completion of the service to the vehicle.

#### **Notice to be signed by court officer**

13(5) The proper officer of the court, if satisfied that the notice of payment complies with subsection (3) and that the owner has paid the required amount into court together with such court fee as may be prescribed, shall sign the notice.

#### **Service of notice of payment**

13(6) The notice of payment shall be served personally by leaving a true copy thereof and of the annexed statement of charges with the garage keeper named in the notice, or the garage keeper's service manager or credit manager or other person in charge at the garage keeper's place of business.

#### **Action within 30 days**

13(7) A garage keeper served with a notice of payment may, within 30 days from the date of service of the notice, commence an action in the court, regardless of the amount, to realize his claim, and where the action is so commenced the moneys in court shall be paid out in accordance with the order of a judge.

#### **Failure to commence action**

13(8) Where the action is not commenced within the time limited by subsection (7), the moneys paid into court shall be paid out to the owner when he applies therefor.

#### **Garage keeper to give up possession**

13(9) Upon the notice of payment being served in accordance with subsection (6), the garage keeper shall forthwith give up possession of the vehicle to the owner, and if the garage keeper, upon being requested by the owner to give up possession of the vehicle, fails or refuses to give up possession of the vehicle to the owner, he is guilty of an offence and liable, on summary conviction, to a fine of not more than \$100. for each day that he has refused or failed to give up possession of the vehicle.

### ***The Warehousemen's Liens Act<sup>3</sup>* (Sections 3, 4, 5, 6, 7, 8 & 9)**

#### **Warehouseman's lien**

- 3 Subject to section 4, every warehouseman has a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his authority.

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<sup>3</sup> C.C.S.M. c. W20.

### **Charges covered by lien**

- 3      The lien is for the amount of the warehouseman's charges, that is to say,
- (a) all lawful charges for storage and preservation of the goods; and
  - (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, cooperating, and other expenses in relation to the goods; and
  - (c) all reasonable charges for any notice required to be given under this Act, and for notice and advertisement of sale, and for sale of the goods where default is made in satisfying the warehouseman's lien.

### **Notice of lien**

4(1)    Where the goods on which a lien exists were deposited, not by the owner or by his authority, but by a person entrusted by the owner or by his authority with the possession of the goods, the warehouseman shall, within two months after he has knowledge of the owner, give notice of the lien

(a) to the owner of the goods, including the person in whom the right of property therein is vested where a valid receipt note, hire receipt, or other instrument evidencing a bailment of the goods, is in existence at the date of deposit; and

(b) to the secured party under a security agreement in respect of which there is a valid registration under *The Personal Property Security Act* at that date.

### **Contents of notice**

4(2)    The notice shall be in writing and contain

(a) a brief description of the goods; and

(b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and

(c) a statement that a lien is claimed by the warehouseman in respect of the goods under this Act.

### **Loss of lien from failure to give notice**

4(3)    Where the warehouseman fails to give the notice required by this section, his lien, as against the person to whom he has failed to give notice, is void as from the expiration of the period of two months from the date on which he has knowledge of the party to whom he has failed to give notice.

### **Enforcement of lien by sale of goods**

5(1) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges, a warehouseman may sell by public auction, in the manner provided in this section, any goods upon which he has a lien for charges that have become due.

### **Notice of sale**

5(2) The warehouseman shall give written notice of his intention to sell

(a) to the person liable as debtor for the charges for which the lien exists; and

(b) to the owner of the goods, including the person in whom the right of property therein is vested, where a valid receipt note, hire receipt, or other instrument evidencing a bailment of the goods, is in existence at the date of deposit of the goods; and

(c) to the secured party under a security agreement in respect of which there is a valid registration under *The Personal Property Security Act* at that date; and

(d) to any other person known by the warehouseman to have or claim an interest in the goods.

### **Contents of notice**

5(3) The notice shall contain

(a) a brief description of the goods; and

(b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and

(c) an itemized statement of the warehouseman's charges showing the sum due at the time of the notice; and

(d) a demand that the amount of the charges as stated in the notice, and such further charges as may accrue, shall be paid on or before a day mentioned, not less than 21 days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of mail if it is sent by mail; and

(e) a statement that, unless the charges are paid within the time mentioned, the goods will be advertised for sale and sold by public auction at a time and place specified in the notice.

**Advertisement of sale**

5(4) Where the charges are not paid on or before the day mentioned in the notice an advertisement of the sale describing the goods to be sold and stating the name of the person liable as debtor for the charges for which the lien exists and the time and place of the sale shall be published at least once a week for two consecutive weeks in a newspaper published in the province and circulating in the locality where the sale is to be held.

**Date of sale**

5(5) The sale shall be held not less than 14 days from the date of the first publication of the advertisement.

**Substantial compliance with Act**

6 Where a notice of lien under section 4 or a notice of intention to sell under section 5 has been given, but the provisions of those sections have not been strictly complied with, if the court or judge before whom any question respecting the notice is tried or inquired into considers that the provisions have been substantially complied with, or that it is inequitable that the lien or sale should be void by reason of such non-compliance, no objection to the sufficiency of the notice shall, in any such case, be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale.

**Disposition of proceeds of sale**

7(1) From the proceeds of the sale the warehouseman shall satisfy his lien, and shall pay over the surplus, if any, to the person entitled thereto; and the warehouseman shall, when paying over the surplus, deliver to the person to whom he pays it a statement of account showing how the amount has been computed.

**Payment into court**

7(2) Where the surplus is not demanded by the person entitled thereto within ten days after the sale, or where there are different claimants or the rights thereto are uncertain, the warehouseman shall pay the surplus into the Court of Queen's Bench upon the order of a judge.

**Terms of order**

7(3) The order may be made ex parte upon such terms and conditions as to costs and otherwise as the judge may direct, and may provide to what fund or name the amount shall be credited.



**Filing of statement**

7(4) The warehouseman at the time of paying the amount into court shall file in court a copy of the statement of account showing how the amount has been computed.

**Duty of warehouseman where charges paid before sale**

8(1) At any time before the goods are sold any person claiming an interest or right of possession in the goods may pay the warehouseman the amount necessary to satisfy his lien, including the expenses incurred in serving notices and advertisement and preparing for the sale up to the time of payment.

**Delivery or retention of goods**

8(2) The warehouseman shall deliver the goods to the person making the payment, if he is the person entitled to the possession of the goods, on payment of the warehouseman's charges thereon; otherwise the warehouseman shall retain possession of the goods according to the terms of the contract of deposit.

**Manner of giving notice required by Act**

9 Where by this Act any notice in writing is required to be given, the notice shall be given by delivering it to the person to whom it is to be given, or by mailing it in the post office, postage paid and registered, addressed to him at his last known address.

***The Hotel Keepers Act*<sup>4</sup> (Sections 2, 3, 4 & 6)****Lien for board and lodging**

2 Any hotel keeper, or boarding house keeper, or lodging house keeper, may detain in his hotel or house, before they have been removed thereout but not afterwards, the trunks, valises, and personal effects, including clothing, of any person who may be indebted to him for an amount incurred by the person while a guest of the hotel or boarding house or lodging house.

**Responsibility for goods detained**

3 Every hotel keeper, boarding house keeper, and lodging house keeper, shall keep in his possession, and is responsible for, any trunks and valises and their contents and any personal effects detained by him for the full period of the detention, unless they are sooner released.

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<sup>4</sup> C.C.S.M. c. H150.

**Right to sell goods detained**

4       Where, at the expiry of the period of detention hereinafter mentioned, the amount for which the trunks, valises, or personal effects, have been detained has not been paid, the keeper of the hotel, boarding house, or lodging house, upon complying with this Act, may sell them or any part thereof by public auction.

**Notice of sale to be given**

6(1)   At least one month before the day fixed for the sale the hotel keeper, boarding house keeper, or lodging house keeper, shall mail in a registered package a notice of the intended sale, addressed to the person so indebted to him, directed to the person's last known address.

## **APPENDIX D**

### **THE ANIMAL KEEPERS' LIEN ACT**

#### **Definitions**

1. In this Act,  
    "animal" means a non-human living sentient being;  
    "animal keeper" means a person who for money or its equivalent keeps for any purpose an animal owned by another person;  
    "gear" means chattel and includes any vehicle, tack, furnishings, and container left with and in the possession of an animal keeper relating to an animal over which a lien is claimed.

#### **Lien on animals and gear**

- 2.(1) Subject to section 4, every animal keeper has a specific possessory lien on any animal or gear for the value, price, or cost of any food, care, attendance, or accommodation, grooming, treating, training, or other services furnished to any animal, including charges incurred by an animal keeper for the cost of food, care and accommodation after giving notice under section 5(2) or section 8(1).
- (2) An animal keeper's lien takes effect when the services described in subsection (1) commence but, until completion of the services, secures only the fair value of the services provided.
- (3) Any animal keeper may detain in the animal keeper's possession any animal and gear in connection with the assertion of a lien pursuant to subsection (1).
- (4) The lien and the right of detention of any animal keeper of any animal or gear has priority over, and is not subject to, any existing lien, security interest, as defined in *The Personal Property Security Act*, bill of sale, or other charge or encumbrance of whatever nature or kind affecting the animal or gear relating thereto.

#### **Care of detained animals and gear**

3. When an animal keeper detains an animal or gear pursuant to section 2, the animal keeper
  - (1) must keep the animal or gear in the animal keeper's possession, and
  - (2) is responsible for the care of the animal and gear in accordance with industry standards.

### **Option to limit lien**

- 4.(1) When an animal keeper has a lien on more than one animal or gear belonging to the same owner, the animal keeper may choose to limit the lien to one or some of the animals or gear towards satisfaction of the debt incurred for all of the owner's animals or gear that are or were in the animal keeper's custody and possession.
- (2) When the animal keeper chooses to limit the lien under subsection (1), the animal keeper may
  - (a) release the remaining animals or gear, free and clear of the lien, to the owner of the animals or gear, or
  - (b) if agreed to by the owner, retain custody and possession of the remaining animals or gear.
- (3) When the animal keeper chooses to limit the lien under subsection (1), the animal keeper may sell the animal or those animals or gear under this Act and apply the proceeds of the sale to the debt incurred for all of the owner's animals or gear that are or were in the animal keeper's custody and possession.
- (4) On the day the owner agrees that the animal keeper is to retain custody and possession of the remaining animals or gear under subsection (2)(b), the animal keeper acquires a new lien under section 2 with respect to those animals or gear.

### **Notice of sale**

- 5.(1) If any part of the amount to which the lien relates is unpaid, the animal keeper has the right to sell the animal or gear by public auction or in any other commercially reasonable manner, including private sale, after giving notice of sale under subsection(2).
- (2) A notice of sale shall be in writing and delivered by:
  - (a) personal delivery to the owner of the animal; or
  - (b) regular mail, email or fax to the owner of the animal; and
  - (c) publishing the notice of sale in a newspaper having general circulation in the province of Manitoba.

(3) The notice of sale shall contain

- (a) a description of animal and gear, if any, over which the lien is claimed;
- (b) the total dollar amount or non-monetary equivalent owing;
- (c) the additional daily rate of care during the period of lien detention;
- (d) a statement that the amount owing must be paid or non-monetary equivalent rendered no more than 30 days after delivery of the notice;
- (e) the proposed method of sale;
- (f) the name, address and telephone number of the person giving notice;
- (g) a simple reference to The Animal Keepers' Lien Act.

(4) The requirement to give notice pursuant to subsection (1) is mandatory.

(5) The wording of this section shall be construed as requiring substantial compliance.

(6) The notice of sale is deemed to be delivered on the latest of

- (a) the date on which the notice is delivered personally to the owner of a detained animal;
- (b) the date on which the notice is posted, sent by email or fax to the owner of a detained animal; and
- (c) the date on which the notice is published in a newspaper having general circulation in the province of Manitoba.

**Discharge of the lien**

6. The person indebted to the animal keeper may reclaim the detained animal and gear by paying the animal keeper the amount owing or rendering the non-monetary equivalent no more than 30 days from the date the notice of sale is delivered under section 5(2) or the notice of intention to retain the animal is delivered under section 8(1).

### **Disposition of proceeds of sale**

- 7.(1) If an animal or gear is sold under section 5(1), the proceeds of sale must be paid in the following order:
- (a) to the animal keeper for expenses incurred in detaining, transporting, advertising and selling the animal or gear;
  - (b) in satisfaction of the lien of the animal keeper.
- (2) If a balance remains after the proceeds of sale have been paid under subsection (1), the balance of the proceeds of sale shall be paid
- (a) if only one person with an interest in the animal or gear that was sold claims the balance of the proceeds of sale within 7 days from the date of the sale, to that person, or
  - (b) into court
    - (i) if more than one person with an interest in the animal or gear that was sold claims the balance of the proceeds of sale within 7 days from the date of the sale, or
    - (ii) if no person with an interest in the animal or gear that was sold claims the balance of the proceeds of sale within 7 days from the date of the sale.
- (3) Notwithstanding subsections (1) and (2), the proceeds of sale must be paid into court as directed by the court if an application is made under section 9.
- (4) If proceeds of sale are paid into court pursuant to subsection 2(b) or (3), the proceeds will be distributed in accordance with an order made under subsection 9(3).

### **Notice of intention to retain the animal or gear**

- 8.(1) An animal keeper who has a right to sell an animal or gear under section 5 may instead propose to retain the animal or gear in satisfaction of the amount of the lien claimed by delivering notice in the manner described in subsection 5(2).
- (2) The notice shall contain
- (a) a description of animal and gear, if any, over which the lien is claimed;
  - (b) the total dollar amount or non-monetary equivalent owing;

- (c) the additional daily rate of care during the period of lien detention;
- (d) a statement that the amount owing must be paid or non monetary equivalent rendered no more than 30 days after delivery of the notice;
- (e) a statement of the animal keeper's intention to retain the animal and gear in satisfaction of the debt;
- (f) a statement advising the person receiving notice of the right to make an objection not more than 30 days after delivery of the notice;
- (g) the name, address and telephone number of the person giving notice;
- (h) a simple reference to The Animal Keepers' Lien Act.

- (3) The requirement to give notice pursuant to subsection (1) is mandatory.
- (4) The wording of this section shall be construed as requiring substantial compliance.
- (5) The notice of intention to retain the animal is deemed to be delivered on the latest of
  - (a) the date on which the notice is delivered personally to the owner of a detained animal;
  - (b) the date on which the notice is posted, sent by email or fax to the owner of a detained animal; and
  - (c) the date on which the notice is published in a newspaper having general circulation in the province of Manitoba.
- (6) Where a person entitled to notice under subsection (1) gives the lien claimant a written objection to the notice of intention to retain the animal within 30 days of the date the notice is delivered, the lien claimant shall, subject to subsection (7), sell the animal and gear in accordance with section 5.
- (7) On receiving an objection under subsection (6), an animal keeper may apply to the Court of Queen's Bench for a determination of any matter concerning the validity of the objection.
- (8) If no effective objection is made within 30 days from the date the notice of intention is delivered, the animal keeper is deemed to have irrevocably elected to retain the animal



and gear, the animal owner's title in the animals and gear is extinguished and gear and title in the animal and gear vests in the animal keeper.

#### **Application to court**

- 9.(1) At any time during the 30 day period following delivery of the notice of sale under subsection 5(2) or delivery of the notice of intention to retain the animal under subsection 8(1), the animal keeper, the owner of an animal or any other person with a property interest in the animal may make an application to the Court of Queen's Bench concerning any matter pertaining to the lien.
- (2) The application shall be made by notice of application, with a copy of the notice of application being served on all other persons with an interest in the animal and gear.
- (3) The Court shall have the jurisdiction to make any order concerning any matter pertaining to the lien.
- (4) All costs of the application shall be in the discretion of the Court.

#### **Application of the common law**

10. The common law of possessory liens, to the extent not changed by this Act, applies to animal keepers.

#### **Transitional**

- 11.(1) In this section, "former Act" means *The Stable Keepers Act*.
- (2) A lien that is created under the former Act continues as if the former Act were not repealed, and the former Act continues to apply in respect of those liens.

#### **Repeal**

12. *The Stable Keepers Act*, C.C.S.M. c.S200, is repealed.

## ***THE STABLE KEEPERS ACT***

### **EXECUTIVE SUMMARY**

The principal purpose of *The Stable Keepers Act* is to provide a stable keeper with the remedy of a possessory lien respecting the animal(s) of an owner who fails to pay charges owing. The Act is essentially unchanged from the time of its enactment in 1884. The animal keeping world has so changed that a refurbishment of the Act is in order, as has occurred in Saskatchewan and Alberta.

The Report recommends a change in title of the Act to *The Animal Keepers' Lien Act* and defines "animal keeper" and "animal" to broaden the application of the Act. The Report recommends a prescribed form of notice in respect of the enforcement of a lien. Possession of the animal and gear remains critical to the validity of a lien, although the Report recommends increased flexibility in this regard by permitting the animal keeper to limit the lien to certain animals to secure payment for services provided to other animals owned by the same person. The only remedy provided in *The Stable Keepers Act* to enforce a lien is to sell the animal(s) by public auction. As the Report explains, the Commission has concluded that sale by public auction is not appropriate in all situations. To furnish an animal keeper with greater flexibility, the Report recommends that the animal keeper have other options including private sale and retention of the animal in satisfaction of the debt.

The Report recommends that a judicial process be available for an animal keeper, animal owner or any other person with a property interest in the animal to initiate. This judicial process allows for resolution of disputes concerning the amounts owing, the appropriate remedy and the respective rights of parties with an interest in the animal and gear.

## **LOI SUR LES TENANCIERS D'ÉCURIE**

### **RÉSUMÉ**

La *Loi sur les tenanciers d'écurie* a pour principal objectif de fournir aux tenanciers d'écurie un recours sous la forme d'un privilège sur le ou les animaux d'un propriétaire qui omet de payer les sommes dues. Cette loi est demeurée pratiquement inchangée depuis son édicition en 1884. Comme la situation des tenanciers d'écurie a connu des changements importants, une refonte de la *Loi* s'impose, comme cela a été le cas en Saskatchewan et en Alberta.

Le rapport recommande que le titre de la *Loi* soit changé (*The Animal Keepers' Lien Act*) et établit la définition de « gardien d'animal » et d'« animal » afin d'élargir l'application de ladite loi. Le rapport recommande également une formule prescrite d'avis en ce qui concerne l'exercice d'un privilège. La possession de l'animal et du matériel demeure essentielle pour la validité du lien. Cependant, le rapport recommande une plus grande souplesse à cet égard en permettant au gardien d'animal de limiter le privilège à certains animaux, afin de pouvoir être payé pour des services offerts à l'égard d'autres animaux appartenant à la même personne. Le seul recours offert dans la *Loi sur les tenanciers d'écurie* pour exercer un privilège, ou la seule façon de procéder pour un tenancier lorsque le propriétaire d'un animal omet de payer les sommes dues, est de vendre l'animal aux enchères publiques. Comme il est indiqué dans le rapport, la Commission en est venue à la conclusion que la vente aux enchères publiques ne convient pas à toutes les situations. Dans le but d'accorder une plus grande souplesse aux gardiens d'animaux, le rapport recommande la mise en place d'autres solutions possibles, y compris la vente privée et la conservation de l'animal à titre de règlement de la dette.

Le rapport recommande la mise en place d'un processus judiciaire qu'un gardien d'animal, un propriétaire d'animal ou toute autre personne ayant un intérêt à l'égard d'un animal pourrait entreprendre. Ce processus judiciaire permet le règlement des conflits concernant les sommes dues, le recours approprié et les droits respectifs des parties qui ont un intérêt à l'égard de l'animal et du matériel.